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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE TRANSPACIFIC PASSENGER
 AIR TRANSPORTATION
 ANTITRUST LITIGATION**

No. 07-CV-5634-CRB

MDL 1913

CLASS ACTION

This Document Relates to:

**PLAINTIFFS' FIRST AMENDED
 CONSOLIDATED CLASS ACTION
 COMPLAINT**

ALL ACTIONS

JURY TRIAL DEMANDED

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NATURE OF THE ACTION

1. This action arises out of a long-running, international conspiracy by the defendants named herein (collectively, “Defendants”) and their co-conspirators which began no later than January 1, 2000, and continues to the present (the “Class Period”), to fix, raise, maintain, and/or stabilize air passenger travel, including associated surcharges, for international flights involving at least one flight segment between the United States and Asia/Oceania¹ in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

2. As set forth in greater detail below, beginning no later than January 1, 2000, the Defendants and their unnamed co-conspirators began imposing air fare increases, including fuel surcharge increases, on international air passengers. The timing and amount of Defendants’ increases were the product of a collusive agreement to fix, raise, maintain, and stabilize the prices of base passenger fares and fuel surcharges on international flights.

3. This complaint is based upon the investigation of counsel, information provided by a participant in the conspiracy, and information obtained through criminal and regulatory investigations in the United States and abroad, including guilty pleas. Even though no discovery has taken place in this case, set forth below are the dates on which meetings took place to initiate and coordinate the conspiracy and the identities of those who participated in these meetings and communications. These descriptions are substantiated by pertinent documents.

4. This action has been proceeding during the pendency of various on-going enforcement actions taken by competition authorities around the world concerning anticompetitive conduct in the air passenger transportation industry. The actions taken so far include, but are not limited to:

- Korean Air Lines, Ltd.’s (“KAL”) guilty plea in the United States for participating in a conspiracy with others to fix the prices of passenger travel, including certain fares and surcharges. “Plea Agreement,” (Aug. 1, 2007) in *United States v. Korean Air Lines, Ltd.*, No.Cr. 07-184 JDB (D.D.C.).

^{1/} Oceania is defined as Australia, New Zealand, and the Pacific Islands. *See* <http://www.airnewzealand.com/gateway.jsp>.

- 1 • Asiana Airlines, Inc.’s (“Asiana”) guilty plea in the United States for participating
2 in a conspiracy with others to fix the prices of certain air passenger fares. “Plea
3 Agreement” (April 9, 2009) in *United States v. Asiana Airlines, Inc.*, Cr. No. 09-
4 Cr-00009 JDB (D.D.C.)
- 5 • All Nippon Airways Company, Limited’s (“ANA”) guilty plea in the United
6 States for participating in a conspiracy with others to fix the prices of certain air
7 passenger fares and a conspiracy to fix the prices of air cargo shipments. “Plea
8 Agreement,” (November 2, 2010) in *United States v. Japan Airlines*, Cr. No. 10-
9 CR-00295-JDB (D.D.C.).
- 10 • The grant of conditional immunity from the United States Department of Justice
11 (“DOJ”) to at least one of the Defendants in exchange for its agreement to
12 cooperate with an investigation concerning price-fixing of passenger travel,
13 including surcharges.
- 14 • Virgin Atlantic’s receipt of leniency from the DOJ and British competition
15 authorities after disclosing its participation in a conspiracy to fix the prices of
16 long-haul international passenger travel, including surcharges.
- 17 • British Airways PLC’s (“British Airways”) guilty plea in the United States and
18 admission to British competition authorities concerning its involvement in a
19 conspiracy to fix the price of long-haul international air transportation, including
20 surcharges. “Plea Agreement” (July 31, 2007) in *United States v. British Airways
21 PLC*, No. Cr 07183 (D.D.C.)

JURISDICTION AND VENUE

22 5. This complaint is filed under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§
23 15 and 26), to obtain injunctive relief for violation of Section 1 of the Sherman Act (15 U.S.C. §
24 1). The Court has original federal question jurisdiction over the Sherman Act claim asserted in
25 this complaint pursuant to 28 U.S.C. §§ 1331 and 1337 and Sections 4 and 16 of the Clayton Act
26 (15 U.S.C. §§ 15 and 26).

27 6. Venue is proper in this District pursuant to Sections 4(a) and 12 of the Clayton
28 Act (15 U.S.C. §§ 15 and 22), and 28 U.S.C. § 1391(b), (c), and (d) because Defendants reside,
transact business, are found within, and/or have agents within this District and a substantial part
of the events giving rise to Plaintiffs’ claims occurred and a substantial portion of the affected
interstate trade and commerce described below has been carried out in this District.

1 13. Plaintiff Scott Frederick is a Washington resident. During the Class Period,
2 Plaintiff purchased air transportation services in the United States from one of more of the
3 Defendants that included at least one flight segment between the U.S. and Asia/Oceania and has
4 suffered pecuniary injury as a result of the antitrust violation alleged herein.

5 14. Plaintiff David Kuo is a California resident. During the Class Period, Plaintiff
6 purchased air transportation services in the United States from one of more of the Defendants
7 that included at least one flight segment between the U.S. and Asia/Oceania and has suffered
8 pecuniary injury as a result of the antitrust violation alleged herein.

9 15. Plaintiff Dickson Leung is a California resident. During the Class Period,
10 Plaintiff purchased air transportation services in the United States from one of more of the
11 Defendants that included at least one flight segment between the U.S. and Asia/Oceania and has
12 suffered pecuniary injury as a result of the antitrust violation alleged herein.

13 16. Plaintiff Brendan Maloof is a New York resident. During the Class Period,
14 Plaintiff purchased air transportation services in the United States from one of more of the
15 Defendants that included at least one flight segment between the U.S. and Asia/Oceania and has
16 suffered pecuniary injury as a result of the antitrust violation alleged herein.

17 17. Plaintiff David Murphy is a resident of Tokyo, Japan. During the Class Period,
18 Plaintiff purchased air transportation services in the United States from one of more of the
19 Defendants that included at least one flight segment between the U.S. and Asia/Oceania and has
20 suffered pecuniary injury as a result of the antitrust violation alleged herein.

21 18. Plaintiff Titi Tran is a California resident. During the Class Period, Plaintiff
22 purchased air transportation services in the United States from one of more of the Defendants
23 that included at least one flight segment between the U.S. and Asia/Oceania and has suffered
24 pecuniary injury as a result of the antitrust violation alleged herein.

25 19. Plaintiff Donald Wortman is a California resident. During the Class Period,
26 Plaintiff purchased air transportation services in the United States from one of more of the
27
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1 Defendants that included at least one flight segment between the U.S. and Asia/Oceania and has
2 suffered pecuniary injury as a result of the antitrust violation alleged herein.

3 **DEFENDANTS**

4 20. Defendant Air France is a French company with its principal place of business
5 located at 45, rue de Paris, Roissy CDG cedex , France F-95747. Air France conducts passenger
6 air transportation throughout the world, including flights to and from the United States and this
7 District. Defendant Air France participated in the conspiracy alleged herein by, among other
8 things, sharing commercially sensitive information through its code-sharing agreements with
9 competitors (*see* ¶¶45-56), participating directly or indirectly in industry meetings that have been
10 deemed by antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive
11 and not in the best interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating
12 in meetings hosted by regional trade associations in which anticompetitive conduct is encouraged
13 and/or tolerated (*see* ¶¶63-67), participating directly or indirectly in meetings with its
14 competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶102-
15 170), participating directly or indirectly in meetings with competitors at which passenger fare
16 pricing was discussed and then benchmarking fares off of the prices agreed upon at those
17 meetings (*see* ¶¶74-96), participating directly or indirectly in meetings with competitors at which
18 collectively increasing fuel surcharges was agreed upon as a means of dealing with rising fuel
19 costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges more than necessary to offset
20 increased fuel costs even though such actions are not consistent with economic theory (*see*
21 ¶¶226-233), instituting surcharges in close proximity to those of its competitors in sharp contrast
22 to conduct that occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or
23 indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in
24 the closely related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania
25 acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation
26 industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶97).

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21. Defendant Air New Zealand Limited (“Air New Zealand”) is a New Zealand company with its principal place of business located at Quay Tower, 29 Customs Street West, Auckland, 1020, New Zealand. Air New Zealand conducts passenger air transportation throughout the world, including flights to and from the United States and this District. Defendant Air New Zealand participated in the conspiracy alleged herein by, among other things, sharing commercially sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56), participating directly or indirectly in industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating directly or indirectly in meetings with competitors at which passenger fare pricing was discussed and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or indirectly in meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to those of its competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶97).

22. Defendant All Nippon Airways Company, Limited (“ANA”) is a Japanese company with its principal place of business located at Shidome-City Center, 1-5-2, Higashi-Shimbashi Minato-ku, Tokyo 105-7133, Japan. ANA conducts passenger air transportation

1 throughout the world, including flights to and from the United States and this District.
2 Defendant ANA participated in the conspiracy alleged herein by, among other things, sharing
3 commercially sensitive information through its code-sharing agreements with competitors (*see*
4 ¶¶45-56), participating directly or indirectly in industry meetings that have been deemed by
5 antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in
6 the best interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in
7 meetings hosted by regional trade associations in which anticompetitive conduct is encouraged
8 and/or tolerated (*see* ¶¶63-67), participating directly or indirectly in meetings with its
9 competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶102-
10 170), participating directly or indirectly in meetings with competitors at which passenger fare
11 pricing was discussed and then benchmarking fares off of the prices agreed upon at those
12 meetings (*see* ¶¶74-96), participating directly or indirectly in meetings with competitors at which
13 collectively increasing fuel surcharges was agreed upon as a means of dealing with rising fuel
14 costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges more than necessary to offset
15 increased fuel costs even though such actions are not consistent with economic theory (*see*
16 ¶¶226-233), instituting surcharges in close proximity to those of its competitors in sharp contrast
17 to conduct that occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or
18 indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in
19 the closely related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania
20 acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation
21 industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶97).

22 23. Defendant Cathay Pacific Airways Limited (“Cathay Pacific”) is a Hong Kong-
23 based company with its principal place of business located at 5/F, South Tower, Cathay Pacific
24 City, 8 Scenic Rd., Hong Kong International Airport, Lantau, Hong Kong. Cathay Pacific
25 conducts passenger air transportation throughout the world, including flights to and from the
26 United States and this District. Defendant Cathay Pacific participated in the conspiracy alleged
27 herein by, among other things, sharing commercially sensitive information through its code-
28

1 sharing agreements with competitors (*see* ¶¶45-56), participating directly or indirectly in
 2 industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia
 3 to be inherently anticompetitive and not in the best interests of competitive airline markets (*see*
 4 ¶¶57-62, 76, 80-90), participating in meetings hosted by regional trade associations in which
 5 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or
 6 indirectly in meetings with its competitors at which coordinating increased base passenger fares
 7 were agreed upon (*see* ¶¶102-170), participating directly or indirectly in meetings with
 8 competitors at which passenger fare pricing was discussed and then benchmarking fares off of
 9 the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or indirectly in
 10 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a
 11 means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges
 12 more than necessary to offset increased fuel costs even though such actions are not consistent
 13 with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to those of its
 14 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶181-193),
 15 and participating directly or indirectly in anticompetitive meetings with other Defendants
 16 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-282). Industry
 17 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the
 18 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia
 19 (*see* ¶97).

20 24. Defendant China Airlines Limited (“China Airlines”) is a Taiwanese company
 21 with its principal place of business located at 131 Nanking East Rd., Section 3, Taipei, Taiwan.
 22 China Airlines conducts passenger air transportation throughout the world, including flights to
 23 and from the United States and this District. Defendant China Airlines participated in the
 24 conspiracy alleged herein by, among other things, sharing commercially sensitive information
 25 through its code-sharing agreements with competitors (*see* ¶¶45-56), participating directly or
 26 indirectly in industry meetings that have been deemed by antitrust officials in the U.S., Europe,
 27 and Australia to be inherently anticompetitive and not in the best interests of competitive airline
 28

1 markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted by regional trade associations
 2 in which anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating
 3 directly or indirectly in meetings with its competitors at which coordinating increased base
 4 passenger fares were agreed upon (*see* ¶¶102-170), participating directly or indirectly in
 5 meetings with competitors at which passenger fare pricing was discussed and then benchmarking
 6 fares off of the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or
 7 indirectly in meetings with competitors at which collectively increasing fuel surcharges was
 8 agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares
 9 and surcharges more than necessary to offset increased fuel costs even though such actions are
 10 not consistent with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to
 11 those of its competitors in sharp contrast to conduct that occurred prior to the Class Period (*see*
 12 ¶¶181-193), and participating directly or indirectly in anticompetitive meetings with other
 13 Defendants concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-
 14 282). Industry analysts based in Asia/Oceania acknowledge that anticompetitive conduct
 15 “overhangs” the airline passenger transportation industry, particularly in light of lax antitrust
 16 enforcement in Asia (*see* ¶96).

17 25. Defendant Continental Airlines, Inc. (“Continental Airlines”) is a United States
 18 corporation with its principal place of business located at 1600 Smith Street, Houston, Texas
 19 77002. Continental Airlines conducts passenger air transportation throughout the world,
 20 including flights to and from the United States and this District. Defendant Continental Airlines
 21 participated in the conspiracy alleged herein by, among other things, sharing commercially
 22 sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56),
 23 participating directly or indirectly in industry meetings that have been deemed by antitrust
 24 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best
 25 interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted
 26 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated
 27 (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which
 28

1 coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating
 2 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed
 3 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96),
 4 participating directly or indirectly in meetings with competitors at which collectively increasing
 5 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178,
 6 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even
 7 though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting
 8 surcharges in close proximity to those of its competitors in sharp contrast to conduct that
 9 occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in
 10 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely
 11 related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge
 12 that anticompetitive conduct “overhangs” the airline passenger transportation industry,
 13 particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

14 26. Defendant EVA Airways Corporation (“EVA”) is a Taiwanese company with its
 15 principal place of business located at 117, Sec. 2, Chang-An E. Rd., Taipei, 104, Taiwan. EVA
 16 conducts passenger air transportation throughout the world, including flights to and from the
 17 United States and this District. Defendant EVA participated in the conspiracy alleged herein by,
 18 among other things, sharing commercially sensitive information through its code-sharing
 19 agreements with competitors (*see* ¶¶45-56), participating directly or indirectly in industry
 20 meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia to be
 21 inherently anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶57-
 22 62, 76, 80-90), participating in meetings hosted by regional trade associations in which
 23 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or
 24 indirectly in meetings with its competitors at which coordinating increased base passenger fares
 25 were agreed upon (*see* ¶¶102-170), participating directly or indirectly in meetings with
 26 competitors at which passenger fare pricing was discussed and then benchmarking fares off of
 27 the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or indirectly in
 28

1 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a
 2 means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges
 3 more than necessary to offset increased fuel costs even though such actions are not consistent
 4 with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to those of its
 5 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶181-193),
 6 and participating directly or indirectly in anticompetitive meetings with other Defendants
 7 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-282). Industry
 8 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the
 9 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia
 10 (*see* ¶96).

11 27. Defendant Japan Airlines International Company, Limited (“JAL”) is a Japanese
 12 company with its principal place of business located at 4-11 Higashi-shinagawa 2-chome,
 13 Shinagawa-ku, Tokyo, 140-8605, Japan. JAL conducts passenger air transportation throughout
 14 the world, including flights to *and* from the United States and this District. Defendant JAL
 15 participated in the conspiracy alleged herein by, among other things, sharing commercially
 16 sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56),
 17 participating directly or indirectly in industry meetings that have been deemed by antitrust
 18 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best
 19 interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted
 20 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated
 21 (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which
 22 coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating
 23 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed
 24 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96),
 25 participating directly or indirectly in meetings with competitors at which collectively increasing
 26 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178,
 27 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even
 28

1 though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting
2 surcharges in close proximity to those of its competitors in sharp contrast to conduct that
3 occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in
4 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely
5 related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge
6 that anticompetitive conduct “overhangs” the airline passenger transportation industry,
7 particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

8 28. Defendant KLM Royal Dutch Airline (“KLM”) is a Dutch company with its
9 principal place of business located at Amsterdamseweg 55, 11282 GP Amstelveen, The
10 Netherlands. KLM conducts passenger air transportation throughout the world, including flights
11 to and from the United States and this District. Defendant KLM participated in the conspiracy
12 alleged herein by, among other things, sharing commercially sensitive information through its
13 code-sharing agreements with competitors (*see* ¶¶45-56), participating directly or indirectly in
14 industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia
15 to be inherently anticompetitive and not in the best interests of competitive airline markets (*see*
16 ¶¶57-62, 76, 80-90), participating in meetings hosted by regional trade associations in which
17 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or
18 indirectly in meetings with its competitors at which coordinating increased base passenger fares
19 were agreed upon (*see* ¶¶102-170), participating directly or indirectly in meetings with
20 competitors at which passenger fare pricing was discussed and then benchmarking fares off of
21 the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or indirectly in
22 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a
23 means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges
24 more than necessary to offset increased fuel costs even though such actions are not consistent
25 with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to those of its
26 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶181-193),
27 and participating directly or indirectly in anticompetitive meetings with other Defendants
28

1 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-282). Industry
 2 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the
 3 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia
 4 (*see* ¶96).

5 29. Defendant Malaysian Airline System Berhad (“Malaysian Airlines”) is a
 6 Malaysian company with its principal place of business located at Bangunan MAS, 33rd Fl.,
 7 Jalan Sultan Ismail, 50250 Kuala Lumpur, Malaysia. Malaysian Airlines conducts passenger air
 8 transportation throughout the world, including flights to and from the United States and this
 9 District. Defendant Malaysian Airlines participated in the conspiracy alleged herein by, among
 10 other things, sharing commercially sensitive information through its code-sharing agreements
 11 with competitors (*see* ¶¶45-56), participating directly or indirectly in industry meetings that have
 12 been deemed by antitrust officials in the U.S., Europe, and Australia to be inherently
 13 anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶57-62, 76, 80-
 14 90), participating in meetings hosted by regional trade associations in which anticompetitive
 15 conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or indirectly in
 16 meetings with its competitors at which coordinating increased base passenger fares were agreed
 17 upon (*see* ¶¶102-170), participating directly or indirectly in meetings with competitors at which
 18 passenger fare pricing was discussed and then benchmarking fares off of the prices agreed upon
 19 at those meetings (*see* ¶¶74-96), participating directly or indirectly in meetings with competitors
 20 at which collectively increasing fuel surcharges was agreed upon as a means of dealing with
 21 rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges more than necessary to
 22 offset increased fuel costs even though such actions are not consistent with economic theory (*see*
 23 ¶¶226-233), instituting surcharges in close proximity to those of its competitors in sharp contrast
 24 to conduct that occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or
 25 indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in
 26 the closely related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania
 27
 28

1 acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation
2 industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

3 30. Defendant Philippine Airlines, Inc. (“Philippine Airlines”) is a Philippine
4 corporation with its principal place of business located at PNB Financial Center, Pres. Diosdado
5 Macapagal Avenue, CCP Complex, Passay City, Philippines. Philippine Airlines conducts
6 passenger air transportation throughout the world, including flights to and from the United States
7 and this District. Defendant Philippine Airlines participated in the conspiracy alleged herein by,
8 among other things, sharing commercially sensitive information through its code-sharing
9 agreements with competitors (*see* ¶¶45-56), participating directly or indirectly in industry
10 meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia to be
11 inherently anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶57-
12 62, 76, 80-90), participating in meetings hosted by regional trade associations in which
13 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or
14 indirectly in meetings with its competitors at which coordinating increased base passenger fares
15 were agreed upon (*see* ¶¶102-170), participating directly or indirectly in meetings with
16 competitors at which passenger fare pricing was discussed and then benchmarking fares off of
17 the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or indirectly in
18 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a
19 means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges
20 more than necessary to offset increased fuel costs even though such actions are not consistent
21 with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to those of its
22 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶181-193),
23 and participating directly or indirectly in anticompetitive meetings with other Defendants
24 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-282). Industry
25 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the
26 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia
27 (*see* ¶96).

31. Defendant Qantas Airways Limited (“Qantas”) is an Australian corporation with its principal place of business located at Qantas Centre, 203 Coward Street, Mascot New South Wales 2020. Qantas conducts passenger air transportation throughout the world, including flights to and from the United States and this District. Defendant Qantas participated in the conspiracy alleged herein by, among other things, sharing commercially sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56), participating directly or indirectly in industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating directly or indirectly in meetings with competitors at which passenger fare pricing was discussed and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or indirectly in meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to those of its competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

32. Defendant SAS AB (“SAS”) is a company based in Scandinavia with its principal place of business located at Frösundaviks Allé 1, Solna, SE-195 87, Stockholm, Sweden. SAS conducts passenger air transportation throughout the world, including flights to and from the

United States and this District. Defendant SAS Airlines participated in the conspiracy alleged herein by, among other things, sharing commercially sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56), participating directly or indirectly in industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating directly or indirectly in meetings with competitors at which passenger fare pricing was discussed and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96), participating directly or indirectly in meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178, 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting surcharges in close proximity to those of its competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

33. Defendant Singapore Airlines Limited (“Singapore Airlines”) is a Singaporean company with its principal place of business located at Airline House, 25 Airline Rd., 819829 Singapore. Singapore Airlines conducts passenger air transportation throughout the world, including flights to and from the United States and this District. Defendant Singapore Airlines participated in the conspiracy alleged herein by, among other things, sharing commercially sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56),

1 participating directly or indirectly in industry meetings that have been deemed by antitrust
 2 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best
 3 interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted
 4 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated
 5 (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which
 6 coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating
 7 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed
 8 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96),
 9 participating directly or indirectly in meetings with competitors at which collectively increasing
 10 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178,
 11 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even
 12 though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting
 13 surcharges in close proximity to those of its competitors in sharp contrast to conduct that
 14 occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in
 15 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely
 16 related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge
 17 that anticompetitive conduct “overhangs” the airline passenger transportation industry,
 18 particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

19 34. Defendant Thai Airways International Public Co., Ltd. (“Thai Airways”) is a Thai
 20 company with its principal place of business located at 89 Vibhavadi-Rangsit Rd., Bangkok,
 21 10900, Thailand. Thai Airways conducts passenger air transportation throughout the world,
 22 including flights to and from the United States and this District. Defendant Thai Airways
 23 participated in the conspiracy alleged herein by, among other things, sharing commercially
 24 sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56),
 25 participating directly or indirectly in industry meetings that have been deemed by antitrust
 26 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best
 27 interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted
 28

1 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated
 2 (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which
 3 coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating
 4 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed
 5 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96),
 6 participating directly or indirectly in meetings with competitors at which collectively increasing
 7 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178,
 8 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even
 9 though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting
 10 surcharges in close proximity to those of its competitors in sharp contrast to conduct that
 11 occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in
 12 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely
 13 related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge
 14 that anticompetitive conduct “overhangs” the airline passenger transportation industry,
 15 particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

16 35. Defendant Vietnam Airlines (“Vietnam Airlines”) is a Vietnamese corporation
 17 with its principal place of business located at 200 Nguyen Son Str., Long Bien District, Hanoi
 18 City, Vietnam. Vietnam Airlines conducts passenger air transportation throughout the world,
 19 including flights to and from the United States and this District. Defendant Vietnam Airlines
 20 participated in the conspiracy alleged herein by, among other things, sharing commercially
 21 sensitive information through its code-sharing agreements with competitors (*see* ¶¶45-56),
 22 participating directly or indirectly in industry meetings that have been deemed by antitrust
 23 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best
 24 interests of competitive airline markets (*see* ¶¶57-62, 76, 80-90), participating in meetings hosted
 25 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated
 26 (*see* ¶¶63-67), participating directly or indirectly in meetings with its competitors at which
 27 coordinating increased base passenger fares were agreed upon (*see* ¶¶102-170), participating
 28

1 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed
 2 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶74-96),
 3 participating directly or indirectly in meetings with competitors at which collectively increasing
 4 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶175, 178,
 5 194-224), raising fares and surcharges more than necessary to offset increased fuel costs even
 6 though such actions are not consistent with economic theory (*see* ¶¶226-233), instituting
 7 surcharges in close proximity to those of its competitors in sharp contrast to conduct that
 8 occurred prior to the Class Period (*see* ¶¶181-193), and participating directly or indirectly in
 9 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely
 10 related air-cargo market (*see* ¶¶234-282). Industry analysts based in Asia/Oceania acknowledge
 11 that anticompetitive conduct “overhangs” the airline passenger transportation industry,
 12 particularly in light of lax antitrust enforcement in Asia (*see* ¶96).

13 **AGENTS**

14 36. The acts alleged to have been done by Defendants were authorized, ordered, or
 15 performed by their directors, officers, managers, agents, employees, or representatives while
 16 actively engaged in the management of Defendants’ affairs.

17 **NON-DEFENDANT, NAMED CO-CONSPIRATORS**

18 37. On information and belief, at all relevant times, other airlines, entities, and/or
 19 persons, including, but not limited to, Northwest Airlines Corporation (“Northwest”), United
 20 Airlines, Inc. (“UAL”), British Airways, American Airlines, Inc. (“American Airlines”), Delta
 21 Airlines, Inc. (“Delta”), Deutsche Lufthansa Airlines AG, KAL, Asiana, Virgin Atlantic Airways
 22 Ltd. (“Virgin Atlantic”), Swiss International Airlines AG and International Air Transport
 23 Association (“IATA”) willingly conspired with Defendants in their unlawful restraint of trade.
 24 All averments of wrongdoing alleged herein against Defendants are also alleged against these
 25 non-defendant co-conspirators.
 26
 27
 28

UNNAMED CO-CONSPIRATORS

38. On information and belief, at all relevant times, other airlines, entities, and/or persons willingly conspired with Defendants and the non-defendant, named co-conspirators in their unlawful restraint of trade. All averments of wrongdoing alleged herein against Defendants and the non-defendant co-conspirators are also alleged against these unnamed co-conspirators as though set forth at length.

INTERSTATE TRADE AND COMMERCE

39. Throughout the Class Period, there was a continuous and uninterrupted flow of invoices for payment, payments, and other documents essential to the provision of passenger air transportation transmitted in interstate and foreign trade and commerce between and among offices of Defendants and their customers located throughout the world, including throughout the United States.

40. Throughout the Class Period, Defendants transported substantial numbers of passengers, in a continuous and uninterrupted flow of interstate and foreign trade and commerce, between various airports in the United States and foreign airports.

41. Throughout the Class Period, Defendants' unlawful activities, as described herein, took place within and substantially affected the flow of interstate and foreign trade and commerce and had a direct, substantial and reasonably foreseeable effect upon commerce in the United States and elsewhere.

THE FOREIGN TRADE AND ANTITRUST IMPROVEMENT ACT IS INAPPLICABLE

42. The Foreign Trade and Antitrust Improvement Act ("FTAIA") (15 U.S.C. §6(a)) does not shield defendants' conduct here from liability under the Sherman and Clayton Acts.

43. Defendants are engaged in the business of delivering air passengers from place to place, including delivery of air passengers from points in the United States to points in Asia/Oceania and vice versa. Plaintiffs' claims are for the increased cost of air transportation which they suffered as a result of Defendants' actions for transportation purchased in the United

1 States. Air transportation from airports in Asia/Oceania to the United States which is paid for in
2 the United States is not subject to the FTAIA.

3 **FACTUAL ALLEGATIONS**

4 **A. Aspects Of The Airline Industry That Facilitate The Alleged Conspiracy**

5 44. Most of the Defendants are the dominant international airlines based in Asia and
6 Oceania, and provide passenger air transportation services on international routes between the
7 United States and Asia/Oceania.

8 **1. The Airline Industry's Use Of Airline Alliances**

9 45. In recent years, the Defendants have established highly integrated alliances that
10 substantially deviate from the norm in most competitive industries.

11 46. The European Competition Authorities ("ECA") recently prepared a working
12 paper entitled "Code-sharing agreements in scheduled passenger air transport—The European
13 Competition Authorities' perspective." The ECA explained the nature and purpose of code-
14 sharing agreements between airlines:

15 A code-sharing agreement is an agreement between two or more
16 air carriers whereby the carrier operating a given flight allows one
17 or more other carriers to market this flight and issue tickets for it as
18 if they were operating the flight themselves. In practice, these
19 other carriers add their own carrier designator code and flight
20 number onto that of the operating carrier. Code share partners also
21 agree on how they compensate each other for the seats they sell on
22 one another's flights.

23 Code-sharing agreements between airlines may go beyond a mere
24 sharing of the designator codes and may be supplemented by other
25 elements of cooperation: *e.g.* coordination of the frequent flyer
26 programmes, route and schedule planning, coordination of
27 marketing, sales and distribution networks, joint pricing, sharing of
28 facilities and services at airports, integration and development of
information systems etc.

47. These code-sharing agreements blur the line between partner and competitor.
Indeed, the ECA continued:

[A] code-sharing agreement between two previously competing
airlines may significantly dampen competition on the routes
covered by the agreement which may lead to price increases.

Given the multi-market nature of the airline industry, where airlines compete on various routes, the exchange of commercially sensitive information that might take place in a code-sharing agreement could favour tacit collusion between the code-share partners also with respect to routes not covered by the agreement. (Emphases added).

48. Defendants Air New Zealand, ANA, SAS, Singapore Airlines, and Thai Airways, among others, including non-defendant co-conspirators Asiana, UAL, and Lufthansa, operate jointly through the Star Alliance, and have established agreements in which they code share seats on each other's flights and share in the revenue generated.

49. Another major industry alliance, Oneworld, includes Defendants JAL, Cathay Pacific, Qantas, and others, as well as non-defendant co-conspirator British Airways. These Defendants have established agreements in which they code share seats on each other's flights and share in the revenue generated. Moreover, during the Class Period, members of Oneworld pressured at least one of the Defendants to combine separate APEX fares into a single APEX (Advanced Purchase Excursion) fare. (APEX fares are discussed below in greater detail.)

50. The third major alliance is SkyTeam. Its members include KAL, Air France, KLM, Continental, and others. These Defendants and non-defendant co-conspirators have established agreements in which they code share seats on each other's flights and share in the revenue generated.

51. In addition, many of the Defendants and non-defendant co-conspirators are participants in a multitude of independent code-sharing arrangements outside of their primary alliances, including, but not limited to, the following agreements: Air New Zealand and JAL; Air New Zealand and Qantas (never implemented because the Australian Competition & Consumer Commission ("ACCC") determined that the agreement was anticompetitive); Cathay Pacific and Malaysian Airlines; EVA and ANA; EVA and Qantas; Malaysian Airlines and ANA; Malaysian Airlines and Singapore Airlines; Malaysian Airlines and Thai Airways; Asiana and Qantas; Thai Airways and China Airlines; Vietnam Airlines and JAL; Vietnam Airlines and China Airlines; Vietnam Airlines and Cathay Pacific; Vietnam Airlines and Qantas; Vietnam Airlines and Philippine Airlines; Philippine Airlines and Cathay Pacific; Philippine Airlines and

1 Malaysian Airlines; Lufthansa and Swiss International; Swiss International and Singapore
 2 Airlines; Swiss International and Thai Airways; Swiss International and UAL; Air France and
 3 Qantas; Air France and JAL; KLM and JAL; KLM and Malaysian Airlines; KLM and
 4 Northwest; KLM and Qantas; Continental Airlines and EVA; Northwest and Air France;
 5 Northwest and Continental; Northwest and KLM; and Northwest and Delta.

6 52. According to testimony by the DOJ's Antitrust Division before the Senate
 7 Committee on Commerce, Science and Transportation:

8 [A]irline marketing alliances . . . are essentially joint ventures
 9 between airlines. These alliances fall somewhere between an
 10 outright merger and a traditional arm's-length interline agreement.
 11 Marketing alliances come in all shapes and sizes . . . Alliances
 12 involving code-sharing are in many respects the most
 13 controversial Code sharing agreements also have the
 14 potential to be anticompetitive. They can result in market
 allocation, capacity limitations, higher fares, or foreclosure of
 rivals from markets, all to the injury of consumers . . . the greatest
 threat to competition comes when two of very few airlines that
 compete in a market enter into a code-sharing agreement in that
 market.

15 53. Antitrust regulators have just begun to step up their oversight of these far reaching
 16 alliances. For example, the Directorate General (Competition) for the European Commission has
 17 opened a "priority" investigation into the competitive effects of certain agreements between
 18 airlines on trans-Atlantic routes. On or about April 20, 2009, *Bloomberg News* reported that
 19 "Jonathan Todd, a commission spokesman, told reporters that the commission doesn't open
 20 probes on a 'routine basis.'" "Based on what commission has seen so far, 'we think that there
 21 may be breaches of the antitrust rules because of the very extensive levels of cooperation on
 22 trans-Atlantic routes between these airlines,' Todd said."

23 54. On July 1, 2009, Neelie Kroes, the European Commission's Competition
 24 Commissioner, raised "serious concerns" about the proposed merger of Lufthansa and Austrian
 25 Airlines.

26 55. In addition, on June 26, 2009, the DOJ announced that it was opposed to a
 27 proposal by the Star Alliance to add Continental as a member. The DOJ determined that the
 28

1 sweeping request was anticompetitive and asked the United States Department of Transportation
2 (“DOT”) to reconsider its tentative approval of the agreement.

3 56. The Defendants’ extensive use of code-sharing agreements exposes them to each
4 others’ commercially sensitive information and therefore reduces strategic uncertainty for each
5 of them within the marketplace.

6 2. The Industry’s Use Of Trade Associations

7 57. The Defendants’ alliance and code-sharing arrangements are not the only
8 opportunities for close interaction between the Defendants. Defendants’ personnel also
9 participate in various trade associations with each other, including the following trade
10 associations relevant to this litigation: the IATA, the Association of Asia-Pacific Airlines
11 (“AAPA”), and the Bureau of Airline Representatives (“BARs”) for Hong Kong, Thailand,
12 Philippines, and Malaysia, among other countries.

13 58. Each Defendant is a member of IATA. IATA is an international trade body
14 representing over 230 airlines.

15 59. IATA has served as a forum for its members to discuss rising fuel costs and the
16 need for measures to mitigate such costs, such as increasing fares or levying fuel surcharges. In
17 fact, as detailed below, IATA has specific committees, such as the IATA Tariff Coordination
18 Conferences, whose express purpose is to collectively set air passenger fares throughout the
19 world, including between the United States and Asia/Oceania. These Tariff Coordination
20 Conferences have been condemned as anticompetitive. For example, on November 9, 2006, the
21 ACCC noted that **“IATA Passenger Tariff Coordinating Conferences provide an
22 opportunity for the sharing of knowledge which given the roles of the airline
23 representatives attending, the clearly stated objectives of the conferences and the matters
24 being discussed would not be in the interests of competitive air passenger markets.”**
25 (Emphases added).

26 60. During the Class Period, one of IATA’s express goals was **“[t]o assist the
27 industry to achieve adequate levels of profitability.”** (Emphases added). That goal is
28

1 repeatedly driven home to IATA's members, including Defendants. Giovanni Bisignani,
2 Director General and CEO of IATA, gave a speech in Paris on June 5, 2006 in which he urged
3 the industry to "manage capacity" in order to increase profitability:

4 Let's start at home. Sometimes we have been our own worst
5 enemy—chasing growth instead of profitability. As discussed, we
6 changed after 2001. But let's be frank. We are now benefiting
7 from a strong global economy. And record aircraft orders could be
8 our Achilles heel if we stop managing capacity carefully.

9 61. Bisignani made similar comments a year earlier, on May 30, 2005, in Tokyo,
10 when he urged IATA's members to limit seating capacity: "We focused too much on market
11 share. We did not effectively match capacity to demand."

12 62. IATA's goal of assisting the industry achieve "adequate" levels of profitability is
13 not the type of mission statement one would normally expect an industry trade association to
14 adopt in order to enhance competition. Indeed, Bisignani's comments are patently
15 anticompetitive—he is repeatedly exhorting individual market participants to refrain from
16 vigorous competition with each other in order to facilitate enhanced profitability for all. And, it
17 is basic microeconomic theory that "managing" supply provides opportunities to increase and/or
18 stabilize prices.

19 63. In addition to their general memberships in IATA, Singapore Airline's CEO,
20 Chew Choon Seng, and JAL's former President, Toshiyuki Shinmachi, served on IATA's Board
21 during the Class Period. They are also actively involved in AAPA, as are other Defendants (Air
22 New Zealand, ANA, Cathay Pacific, China Airlines, EVA, KAL, Malaysian Airlines, Philippine
23 Airlines, Qantas, Thai Airways, and Vietnam Airlines).

24 64. Like IATA, the AAPA has served as a forum for its members to discuss rising
25 fuel costs and the need for measures to mitigate such costs, such as increasing fares or levying
26 fuel surcharges.

27 65. Like IATA, the AAPA has a long history of emphasizing collusion over
28 competition. For example, at the AAPA's November 15, 2002, annual meeting, the chief
executive officer of Philippine Airlines, Lucio Tan, declared: "The issues confronting our

1 industry today are critical and pressing.” Tan cited security threats, declining traffic, high
 2 insurance premiums and rising fuel costs as among the major challenges facing the industry. “To
 3 effectively address these issues, we need our combined strategies,” Tan explained. “We need to
 4 direct our efforts towards one goal—survival. **And in order to survive, competition must be**
 5 **replaced by cooperation.**” (Emphases added).

6 66. In anticipation of AAPA’s annual meeting, China Airlines similarly stated in
 7 November 2004 that:

8 The 48th Assembly of Presidents will take place at the Grand
 9 Hyatt Taipei November 25 and 26. Important airline industry
 10 issues, such as US regulatory policies, rising fuel costs, hedging
 11 strategies, insurance, war risks and low-cost carriers, will be
 reviewed and discussed. **In the past, the Assembly has helped**
maintain a mutual understanding and a common purpose
among airlines in the Asia Pacific region. (Emphases added).

12 67. In addition, the Defendants are participants in BAR organizations in Hong Kong,
 13 Thailand, the Philippines, and Malaysia. Until very recently, Hong Kong did not have a
 14 competition law that prevented Defendants from tacitly or expressly reaching agreements on
 15 passenger fares, including surcharges. Moreover, antitrust regulators in these and other Asian
 16 countries have not, until very recently, aggressively enforced their countries’ respective
 17 competition rules. These BAR organizations have served as forums for Defendants to discuss
 18 and agree on passenger fares and fuel surcharges. Indeed, the Thailand BAR describes itself as a
 19 “forum for member airlines to deal with common interests and issues and represents the interests
 20 of member airlines to government, official organizations and other parties interested in the
 21 aviation industry in Thailand. This includes maintaining close liaison on a regular basis with the
 22 International Air Transport Association (IATA), the IATA Billing and Settlement Plan (BSP),
 23 the Air Cargo Business Association (ACBA) and other industry bodies.” As of 2006, the
 24 Thailand BAR had 56 members and 4 associate members. The Thailand BAR’s executive
 25 committee included Thai Airways, Cathay Pacific, Singapore Airlines, Swiss International, SAS,
 26 Qantas, British Airways, Northwest, and Emirates. An executive from Swiss International was
 27 appointed president of the Thailand BAR as of 2006.
 28

1 68. In November 2007, shortly after the first of these lawsuits was filed, BAR HK
 2 uploaded onto its website a new policy prohibiting anticompetitive conduct, which provides in
 3 relevant part as follows:

4 Participants shall comply with the following general principles in
 5 respect of all their activities within BAR HK:

6 Participants' competitive behaviour should remain independent.
 7 Participants' commercial decisions must be made unilaterally and
 8 independently from that of their competitors. Participants will not
 engage in express or tacit agreements or understandings to reduce
 competition or any form of collusion.

9 69. In summary, the highly integrated economic agreements between the Defendants
 10 and their various code-share and alliance partners, and the relationships fostered by Defendants'
 11 key employees at industry meetings concerning fares and surcharges reinforce and facilitate the
 12 conspiracy alleged below.

13 **B. The Conspiracy**

14 70. Beginning no later than January 1, 2000, the Defendants and their co-conspirators
 15 began increasing the price of passenger air transportation on international air passengers. These
 16 price increases were done through previously agreed means, at previously agreed amounts, and
 17 through previously agreed timing. The price increases were the product of a collusive agreement
 18 to fix, raise, maintain, and stabilize the prices of base passenger fares and fuel surcharges on
 19 international flights.

20 71. Base fares for multi-segment travel—*e.g.* a flight from the United States to New
 21 Zealand to Western Samoa—are constructed using a methodology established by the Defendants
 22 that allows for ready determination of the portion of the total fare allocated to each segment of
 23 travel.

24 72. The fuel surcharges referenced herein are applied “per segment” or “per coupon”
 25 —*i.e.*, they apply to a discreet and identifiable segment of travel. Therefore, these fuel
 26 surcharges apply equally, for example, to any passenger traveling from San Francisco to Japan
 27 regardless of whether San Francisco was the point of origin for the trip, whether Japan was the
 28

1 final destination, or whether the flight from San Francisco to Japan was only one segment of a
2 multi-segment trip.

3 73. Neither the DOT nor United States law allows Defendants to participate in
4 coordinated efforts to set the price fares and surcharges for air transportation to and from the
5 United States, except with respect to the limited grants of immunity discussed herein.

6 **1. Base Passenger Fares Are Set In An Anticompetitive Environment**

7 **a. Immunized IATA Fares**

8 74. IATA and its airline members have historically been the beneficiaries of limited
9 antitrust immunity from a number of worldwide competition authorities, including the DOT, the
10 ACCC, and the European Union. These grants of immunity allowed IATA and its member
11 airlines to meet and agree on fares for interline (a.k.a. multi-airline) travel throughout the world.

12 75. Immunized fares (hereinafter referred to as “IATA fares”) are set during meetings
13 between member airlines at regularly scheduled IATA Tariff Coordination Conferences and are
14 issued in fare classes P and F (First Class), J and C (Business Class), and Y (Economy Class),
15 although not all fares in each of those service classes are immunized. Moreover, the agreements
16 reached at IATA Tariff Conferences cannot be implemented until all governmental approvals,
17 including approval from the DOT, have been obtained.

18 76. Most of the Defendants participate in these Tariff Coordination Conferences. *See*
19 <http://www.iata.org/whatwedo/passenger/tariffs/tcparticipants.htm>.

20 77. In a November 9, 2006, Determination by the ACCC concerning IATA’s
21 Application for Revocation and Substitution of Authorization A90435 (the “ACCC
22 Determination”), the ACCC summarized the way in which IATA fares are established:

23 The interaction of elements which constitute the IATA interline
24 system for the transport of passenger and cargo occurs as follows:

25 A. Airlines agree between each other that they will accept
26 each others’ passenger tickets and cargo air waybills where
27 those tickets and waybills incorporate an IATA
28 interlineable fare or rate (IATA Multilateral Interline
Agreements).

- 1 B. IATA interline fares for passengers and rates for cargo are
2 determined jointly by airlines at IATA Tariff Coordinating
3 Conferences (Passenger Tariff Coordination and Cargo
4 Tariff Coordination).
- 5 C. Airlines agree how revenue from the sale of a passenger
6 ticket with an IATA interlineable fare or a cargo air waybill
7 with an IATA interlineable rate is to be apportioned
8 between the carriers who accept the waybill as part of an
9 interline journey (IATA Prorate System).
- 10 D. Revenue from a waybill with an interline rate is nominally
11 attributed to the primary carrier, the carrier undertaking the
12 first leg of the journey, and then distributed amongst other
13 participating carriers using proportions agreed with the
14 Prorate System (IATA Clearing House).

15 78. Not surprisingly, IATA fares are generally the most expensive fare available in
16 each service class.

17 79. In recent years, competition authorities in the United States, Europe, and Australia
18 have moved to scale back the limited grant of antitrust immunity provided to IATA due to
19 concerns about the inherently anticompetitive nature of the Tariff Coordination Conferences.

20 80. In a July 5, 2006 “Order to Show Cause” concerning why IATA’s antitrust
21 immunity should not be revoked, the DOT examined a handful of minutes from the Tariff
22 Coordination Conferences and noted that the conference structure has led to substantial
23 anticompetitive abuse by member airlines, including abuse by several Defendants and their co-
24 conspirators.

25 81. For example, the DOT noted:

26 **A participating airline will at times urge competing airlines to**
27 **raise fares in their markets in order to avoid undercutting the**
28 **fares charged in the airline’s own principal markets. See, . . .**
IATA Application, Docket 2004-20051, Minutes of October 25-
November 4, 2004, Conference at para. 147 (Japan Air Lines
asked for higher fares in U.S.-Korean markets because the
existing fares were undercutting U.S.-Japan fares). (Emphases
added).

82. The DOT, in its “Order to Show Cause” concluded:

The chairman [at IATA Tariff Conferences] does not otherwise
state that the discussions are subject to any antitrust or
competition law restraints, except insofar as our alliance condition
bars alliance members from participating in the discussions of
fares and rates for alliance markets **The minutes thus show**

1 **that the IATA members do not believe that their discussions**
 2 **are subject to the antitrust law prohibitions normally imposed**
 3 **on pricing discussions between competitors.**

 * * *

4 In these circumstances, we think the IATA by-laws reduce
 5 competition. This tentative finding is consistent with the
 6 established antitrust law principle that, with rare exceptions,
 7 discussions and agreements on pricing between competitors
 8 reduce competition. (Emphases added).

9 83. Moreover, following each Tariff Coordination Conference, IATA publishes and
 10 distributes the names, e-mail addresses, and telephone numbers of each of the participants. This
 11 practice facilitates communication between employees of the Defendants outside of the Tariff
 12 Coordination Conferences. It is neither necessary nor appropriate for the various attendees at the
 13 Tariff Coordination Conferences—whose express duties are to collectively set fares—to be
 14 communicating with each other outside of formal IATA channels.

15 84. On June 3, 2005, the ACCC preliminarily concluded that “while there may not be
 16 any explicit agreement on market fares between airline representatives at IATA Tariff
 17 Coordination Conferences, it is likely given the roles of the representatives, the clearly stated
 18 objectives of the conferences and the matters being discussed that the sharing of knowledge that
 19 occurs could be conducive to coordinated conduct in relation to market fares and would not be in
 20 the interests of competitive airline markets.”

21 85. On November 9, 2006, the ACCC announced that all immunity for IATA
 22 activities will be phased out by June 30, 2008, noting again that “[t]he ACCC believes that
 23 **IATA Passenger Tariff Coordinating Conferences provide an opportunity for the sharing**
 24 **of knowledge which given the roles of the airline representatives attending, the clearly**
 25 **stated objectives of the conferences and the matters being discussed would not be in the**
 26 **interests of competitive air passenger markets.”** (Emphases added).

27 86. Similarly, on or about March 14, 2005, the Directorate General (Competition) of
 28 the European Commission found that the IATA Tariff Conferences present a “major risk” for
 29 anticompetitive conduct by the member airlines. The Directorate General stated:

1 To conclude, the organisation of **IATA Tariff Conferences . . .**
2 **provides an opportunity for competing undertakings to**
3 **regularly communicate on commercially sensitive**
4 **information, in particular pricing and sale conditions. Such**
5 **regular communication helps to eliminate strategic**
6 **uncertainty and thereby raises significantly the risk of**
7 **collusion between airlines.** Airlines can agree on future conduct
8 and generally coordinate tacitly or explicitly their behaviour.
9 IATA Passenger Tariff Conferences therefore appear to present a
10 major risk to restrict competition. (Emphases added).
11

12
13 87. The Commission further noted:

14 By adopting similar terms and conditions [for non-immunized
15 fares], IATA members develop similar tariff structures. This
16 makes it easier for competing carriers to monitor each other's
17 fares. Detection on deviation from agreed upon conduct is
18 quicker. This reinforces the stability of possible collusive
19 agreements between competing airlines, whether tacit or explicit.
20 The standardisation of pricing rules is suspicious because it
21 remains unclear how this benefits consumers.
22

23 88. On October 3, 2006, the European Commission published (EC) Commission
24 Regulation 1459/2006, which phased out antitrust immunity to IATA and its member airlines,
25 including the elimination of immunity for Tariff Coordination Conferences concerning the routes
26 between Europe and the United States and Australia on June 30, 2007 and between Europe and
27 the rest of the world on October 31, 2007.

28 89. On March 30, 2007, the DOT entered a final order disapproving IATA's
Provisions for the Conduct of the IATA Traffic Coordination Conferences insofar as the
agreement authorized United States and foreign carriers to discuss and agree upon fares, rates,
conditions of service, and price and rate applicability conditions, either directly or indirectly or
through tariff conferences or other related means of information sharing for passenger and cargo
air services: (i) between the United States and the European Union (together with Iceland,
Norway, Switzerland, and Liechtenstein); (ii) between the United States and the overseas
territories of the member states of the European Union subject to an air services agreement
between the United States and a member state; and (iii) between the United States and Australia

1 (the “Final Order”). *See* IATA Tariff Conference Case, Order 2007-3-23 (Docket OST-2006-
2 25307).

3 90. The DOT explained that “[t]he tariff conferences are anticompetitive and do not
4 provide important public benefits or meet a serious transportation need. **Pricing discussions**
5 **among competitors of the kind that take place at the IATA tariff conferences are inherently**
6 **anticompetitive and likely to increase the fares paid by consumers.”** (Emphases added).

7 **b. The Use Of Immunized IATA Fares As A Benchmark For Non-**
8 **Immunized Fares**

9 91. The number of IATA fares sold by airlines is a small fraction of the number of
10 tickets issued to air passengers annually. However, the effect of the anticompetitive conduct
11 observed in the immunized Tariff Coordination Conferences is not limited to the relatively small
12 market for immunized IATA fares—it also affects the vastly larger market for non-immunized
13 fares as well.

14 92. For example, the ACCC recently conducted a fare analysis which suggests that
15 immunized IATA fares are used by the airline industry as benchmarks for the fare prices charged
16 for non-immunized air passenger service.

17 93. The ACCC also noted “that the IATA Tariff Services Handbook, Issue 1 of 1 July
18 1999, specifically identifies as a benefit to airlines from attending IATA Tariff Coordinating
19 Conferences the gaining of ‘access to market knowledge’: ‘Participation in Tariff Coordination
20 opens the door to sharing in the exchange of market and other types of information required to
21 intelligently price passenger and cargo tariffs.’”

22 94. The DOT similarly noted in its March 30, 2007 Final Order that “an agreement by
23 airlines participating in a tariff conference that IATA fares should be increased by a certain
24 percentage amount can easily represent an industry agreement that equivalent fares for on-line
25 service [i.e., non-immunized fares] should be increased by a similar amount. DG-Competition
26 and the ACCC showed that in fact this has happened.”
27
28

1 95. In connection with its analysis, the ACCC interviewed Qantas personnel, who
 2 confirmed the existence of a pricing relationship between IATA fares and Qantas' non-
 3 immunized fares. Indeed, "Qantas indicated in its discussions with the ACCC that it would
 4 normally try to apply fare increases agreed at IATA Tariff Coordinating Conferences to Qantas'
 5 own published fares for premium classes on all routes on which it operates as the market
 6 allows."

7 96. The ACCC has reported that many other airlines have acknowledged in
 8 submissions that IATA fares are used for benchmarking prices for non-immunized fares. In a
 9 recent article, Peter Harbison from the Sydney-based Centre for Asia Pacific Aviation, a
 10 consulting organization, noted that fixing prices of passenger fares occurred "fairly openly" at
 11 one point in time, and that the culture still "overhangs" today. Harbison went on to note that
 12 [t]here's a lot of interaction at management level between airlines." Shukor Yusof, an aviation
 13 analyst with Standard and Poor's Equity Research, further commented that Asia, in particular,
 14 lacks an over-arching anti-trust legal framework. Yusof was quoted as saying, "There's no one
 15 main body to oversee that kind of thing." Jim Eckes of Indoswiss Aviation Consultancy in Hong
 16 Kong noted that talking about prices between competitors has more of a stigma in the United
 17 States, where the law is firm.

18 **c. Lockstep Pricing Is Not To Be Expected In A Competitive Market**

19 97. The following chart shows the pricing for a small selection of non-immunized
 20 passenger air fares (and surcharges) as of November of 2007, as reported by
 21 www.flightstats.com. There is an obvious pattern of identical or virtually identical pricing by the
 22 defendants' closest competitors on routes between the United States and Asia and Oceania:

23 **San Francisco to Auckland**

Airline	Cabin	Base Fare	Surcharges	Total
Air New Zealand	Coach	\$918	\$255	\$1173
Qantas	Coach	\$918	\$255	\$1173

San Francisco to Sydney

Airline	Cabin	Base Fare	Surcharges	Total
Air New Zealand	Coach	\$818	\$312	\$1130

San Francisco to Bangkok

Airline	Cabin	Base Fare	Surcharges	Total
ANA	Coach	\$650	\$281	\$931
JAL	Coach	\$620	\$281	\$901

San Francisco to Hong Kong

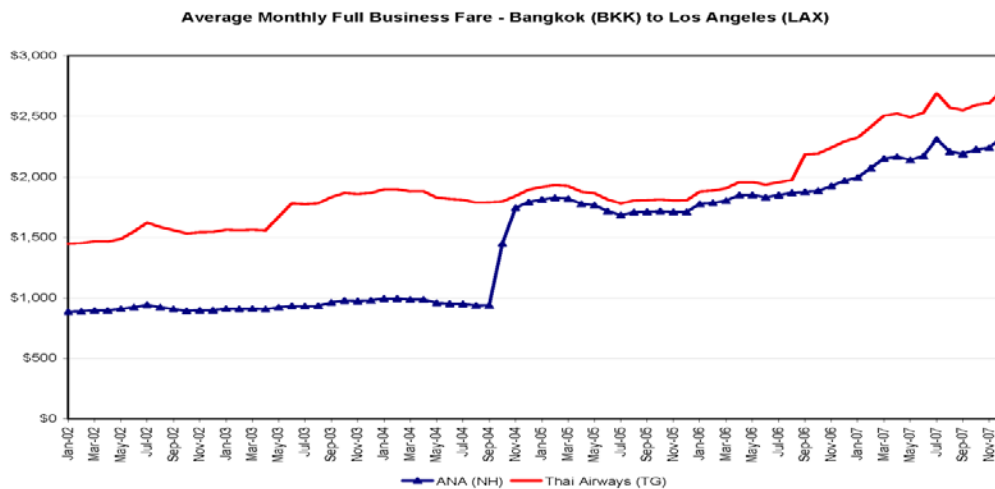
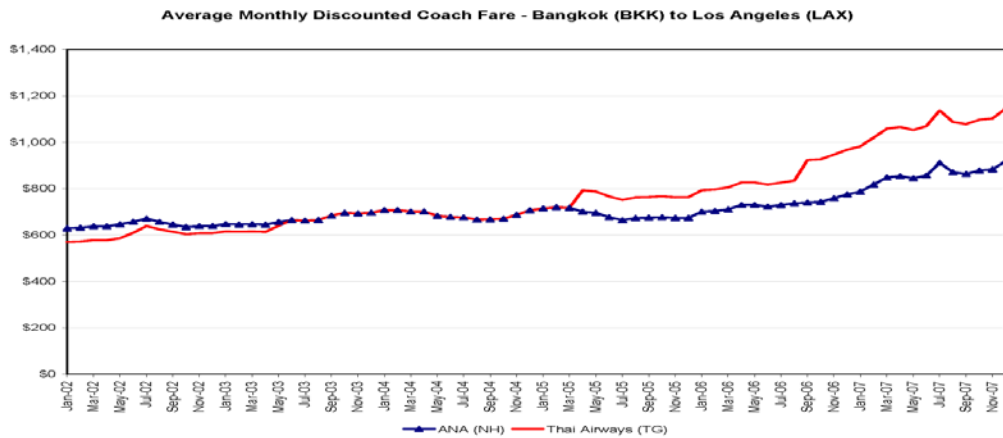
Airline	Cabin	Base Fare	Surcharges	Total
ANA	Coach	\$580	\$269	\$849
JAL	Coach	\$579	\$269	\$848

San Francisco to Tokyo

Airline	Cabin	Base Fare	Surcharges	Total
ANA	Coach	\$529	\$270	\$799
JAL	Coach	\$529	\$270	\$799

98. There are other instances of coordinated base fare pricing. For example, the following charts demonstrate that Defendant ANA and Defendant Thai Airways closely coordinated base fares during portions of the Class Period.

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99. With respect to ANA's business fare pricing from Bangkok to Los Angeles, the preceding chart identifies a substantial and historically unprecedented change in pricing behavior that commenced in or about September 2004 and continued through the DOJ raids in February 2006. This sharp change in pricing occurred during summer 2004, which is the same time period during which the Defendants and their co-conspirators instituted and quickly raised fuel surcharges.

100. Defendants' cost structures are markedly different and vary based in part on the age of their aircraft fleet, their labor costs, and whether and to what extent they hedged input costs, including fuel costs. Under these circumstances, economic theory suggests that competition would result in varying fare prices. This is particularly true where, as here, fixed costs, including the acquisition, operation, and maintenance of aircraft, are high and the marginal cost of adding additional passengers to each flight is small. Under such circumstances, one would expect to see airlines with cost advantages routinely undercutting their competitors' pricing in order to maximize seat occupancy on their planes. During the Class Period, that has not occurred.

101. The United States domestic market provides an illustrative example of how economic theory plays out in the real world. Southwest Airlines—which is not a member of IATA, AAPA, and the various Asian BAR associations and is therefore not exposed to the collective rate-setting culture promoted by these organizations—is well-known to be a vigorous competitor in the domestic markets in which it operates. Southwest Airlines is able to routinely beat—not simply match—the fares offered by its competition by, among other things, hedging fuel costs, minimizing the diversity of aircraft it operates, and paying close attention to its labor costs. The difference in cost structure between Southwest and its competitors naturally leads to a variation in fare prices, something that is not seen on routes between the United States and Asia/Oceania—routes that are dominated by the majority of the Defendants.

d. Specific Examples Of Base Fare Coordination

102. Plaintiffs have learned to date of a number of specific examples of collusion among Defendants on base air passenger fares. These are only illustrative; discovery in this case is likely to yield more evidence.

103. ANA and JAL conspired with one another and with other Defendants to coordinate various non-IATA carrier fares between different city pairs. ANA and JAL functioned as the primary airlines operating in Japan, and were consistently contacted by non-Japanese Defendant carriers regarding the coordination of carrier fares for all fare categories for

1 flights from Japan to the United States. In hubs in which ANA and JAL were less prominent
2 players, ANA and JAL remained actively involved in the coordination of carrier fares, often
3 involving the primary Defendant or Defendants operating from any given hub.

4 104. Airline carriers generally set passenger fares for different fare categories twice a
5 year. The fare decisions were effective throughout the first and second half of each fiscal year.
6 Carrier fare communications that took place from December through February of a given year set
7 the fare price for the first half of that fiscal year. Carrier fare communications that took place
8 from June through August of a given year set the fare price for the second half of that fiscal year.
9 Defendants coordinated at least the following fare categories for transpacific flights from Asia to
10 the United States: (a) an APEX (Advanced Purchase Excursion) fare, which is a discounted
11 economy class fare that requires an advanced purchase, and is set based on specific city-pair
12 destinations; (b) a ZONE PEX (or Z-PEX) fare, which is a discounted economy class fare that
13 does not require an advanced purchase and does not involve specific city-pair destinations
14 (ZONE PEX fares are set based on zone, or regional, destinations as opposed to individual cities
15 (*i.e.*, Narita to a group of United States West Coast cities)); and (c) C-APEX fares, which is a
16 special form of an APEX fare.

17 105. From at least 2004 into the summer of 2006, ANA and JAL coordinated APEX,
18 ZONE PEX and C-APEX carrier fares on flights from Japan to the United States. ANA and JAL
19 communicated approximately five or six fiscal half-years within the relevant time period. ANA
20 and JAL communications regarding the coordination of carrier fares occurred in January and
21 February for carrier fares effective during the first half of the fiscal year, and June and July for
22 carrier fares effective during the second half of the fiscal year. During that time, ANA and JAL
23 illegally set carrier fares for the six month period that followed. ANA and JAL discussed and
24 agreed upon the level of the fares, fare rules, seasonal discounting, fare finalization and final fare
25 structures.

26 106. The primary ANA employees who participated in these discussions were Akiko
27 Oyama, Atsushi Yabuki, and Keiji Omae (among others). The primary JAL employees who
28

1 participated in these discussions regarding carrier fares were Misato Tanaka, Noboru Hirai,
2 Tomomi Kubota, Takeshi Aoki, Kenichiro Ochi, and Takashi Inagaki. Although all individuals
3 listed above were not involved in the conspiracy at the same time, during their tenure as
4 employees of ANA and JAL's fare-setting groups, these ANA and JAL employees participated
5 in discussions regarding coordinated rates.

6 107. Direct communications between ANA and JAL employees regarding seasonality
7 and the coordination of fare levels occurred by e-mail and telephone.

8 108. In addition, ANA employees and JAL employees also exchanged fare charts and
9 then discussed those charts.

10 109. Various ANA employees discussed carrier fare levels at least eight times with
11 Takashi Inagaki of JAL. Similarly, various ANA employees, including Keiji Omae, also
12 discussed carrier fare coordination with Kenichiro Ochi of JAL. Akiko Oyama and Atsushi
13 Yabuki, both from ANA, also discussed C-APEX carrier fare coordination with Tomomi Kubota
14 and Takashi Inagaki of JAL.

15 110. Between December of 2005 and January of 2006, ANA employees, including
16 Akiko Oyama, participated in discussions with JAL employees Misato Tanaka, Takeshi Aoki
17 and Takashi Inagaki regarding the coordination of APEX, ZONE PEX and C-APEX fares for
18 flights from Japan, including Japan-U.S. flights for the first half of the 2006 fiscal year. For
19 example, one e-mail dated December 27, 2005 mentions that JAL prepared APEX pricing that
20 matched ANA's pricing for the first half of the 2006 fiscal year and that the two companies
21 would get together to "talk this over."

22 111. In July of 2006, ANA employees, including Atsushi Yabuki, participated in
23 communications with JAL employees, including Takeshi Aoki, regarding the coordination of
24 changes to each airline's APEX fare structure. Prior to the proposed coordination, ANA and
25 JAL offered separate 14 day and 28 day APEX fares. (The term "14 day and 28 day APEX fare"
26 is defined by the number of days a ticket is bought prior to a given flight). JAL employees
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1 contacted ANA employees, including Atsushi Yabuki, with a proposal for both ANA and JAL to
2 coordinate and combine their APEX fares into a single 21 day APEX fare.

3 112. Indeed, a number of e-mails that were generated in late 2005 and early 2006
4 reflect ANA's agreements with JAL to coordinate certain fares. One set of examples involved
5 ZONE PEX pricing. These e-mails showed that ANA proposed that JAL raise such passenger
6 fares during 2006. Subsequent e-mails reveal that an agreement "probably" could be reached.
7 This agreement was, in fact, reached. ANA and JAL also exchanged proposals and counter
8 proposals via e-mail throughout the month of January regarding ZONE PEX pricing.

9 113. Other passenger fares between the United States and Japan were also set through
10 coordinated agreements between ANA and JAL. Non-immunized fares are benchmarked off of
11 the IATA "normal" rate. Thus, for example, one of the fare classes discussed below (the non-
12 immunized "Business Saver" fare) was discounted by 25% off of the IATA fare for routes
13 between Tokyo and New York during 2005 (for weekday service).

14 114. Beginning no later than January 1, 2000, ANA and JAL began to coordinate the
15 price of non-immunized passenger fares they offered for travel between the United States and
16 Japan, including, so-called "Yobiyose" economy-class fares, "Satogaeri" economy-class fares,
17 and "Business Saver" business class fares. All three fare categories are discounted relative to the
18 IATA "normal" rate for seating in the respective class on transpacific flights.

19 115. **Yobiyose Fares.** From at least 2000 or early 2001 until their elimination in
20 October of 2005, ANA and JAL coordinated the setting and eventual elimination of Yobiyose
21 fares. Yobiyose fares were discount fares for sale in the United States for roundtrip travel from
22 Japan to the United States. They were established to allow Japanese nationals living in the
23 United States to bring their family members in Japan to visit them in the United States.
24 Yobiyose fares were set semi-annually for the periods between April 1 to September 30 and
25 October 1 through March 31. When advance purchase published fares were introduced in Japan,
26 however, these Yobiyose fares became a problem for the companies because they were
27 undercutting the companies' published fares. ANA and JAL began coordinating Yobiyose fares
28

1 to increase the Yobiyose fares to be more in line with the published fares and then eventually
2 agreed to eliminate Yobiyose fares altogether.

3 116. The employees that either participated in or had knowledge of the Yobiyose fare
4 agreements between ANA and JAL include: Yosaku Osumi, ANA's Deputy Director of
5 Marketing and Sales Planning; Aknobu Shibata and Yasushi Omori of JAL's Tokyo office;
6 Shinzo Amagai and his superior at JAL Americas Region El Segundo Headquarters, Fusako
7 Cahill, among others.

8 117. Every half-year, beginning no later than later 2000 or early 2001, representatives
9 from the United States head offices of ANA and JAL coordinated on Yobiyose fares for the next
10 six-month rate period. In-person meetings were usually held at ANA's office in New York.
11 Often, during or before these meetings, ANA and JAL exchanged proposed fare sheets.

12 118. For example, during a meeting at ANA's New York office on February 16, 2001,
13 ANA and JAL considered proposed coordinated Yobiyose fares for the upcoming six-month
14 period.

15 119. On March 1, 2002, representatives of ANA and JAL met again at ANA's New
16 York office to discuss revising the Yobiyose rate structure and level. They discussed whether to
17 introduce a lower price for 14-day advance purchase tickets or to adopt a three-tiered advance
18 purchase structure, in which the ticket price would depend on whether the ticket was purchased
19 more than 28 days in advance, more than 14 days in advance or less than 14 days in advance.

20 120. Another meeting was held on August 15, 2002. At that meeting, representatives
21 of ANA and JAL agreed to discontinue the 28-day and 14-day "advance purchase" Yobiyose
22 fares and to offer only the highest-priced fare that did not require any advance purchase. ANA
23 and JAL also agreed to a formula for setting the non-advance purchase Yobiyose fares.

24 121. At a lunch meeting in late 2002 or early 2003, representatives of ANA and JAL
25 agreed that the system previously established for Yobiyose fares should be maintained for the
26 upcoming six month period.
27
28

1 122. The two carriers subsequently agreed on the price and terms of Yobiyose fares for
2 each six-month period until October 1, 2005.

3 123. At some point in 2005, a discussion was held between ANA and JAL at which
4 both airlines confirmed that they would discontinue Yobiyose fares beginning with the fare
5 season starting October 1, 2005.

6 124. **Satogaeri fares.** Satogaeri, or “homecoming” fares, are discount fares
7 established to allow Japanese people living in the United States to travel to Japan to visit family
8 and friends. Satogaeri fares are discount fares for sale in the United States for roundtrip travel
9 from the United States to Japan. Unlike Yobiyose fares, Satogaeri fares (which are sometimes
10 called “M” class fares) fluctuated in response to changing market conditions.

11 125. Beginning no later than late 2000 and continuing through early 2006, ANA and
12 JAL frequently exchanged advance notice of proposed changes in Satogaeri fares. Such
13 communications took place between employees in regional sales offices within the United States,
14 as well as between employees in the two carriers’ U.S. headquarters offices.

15 126. ANA and JAL employees with knowledge of the conspiracy include Sugi,
16 Yokoyama and Isao Ono of ANA; and Amagai, Sun, Cahill and Michiko Kumataka of JAL.

17 127. **Discount Business Class fares.** Discount or “Business Saver” fares are business
18 (or “C”) class fares for sale in the United States that are set substantially below immunized IATA
19 tariff rates for business class travel. For example, in 2005, the benchmark for discount business
20 class travel between Tokyo and New York (for weekday travel) was 75% of the IATA
21 immunized business class fare. ANA introduced discount business class fares from the United
22 States to Japan in early 2002, followed soon thereafter by JAL.

23 128. In March of 2002, ANA and JAL agreed not to compete with respect to the level
24 of discount business class fares from the United States.

25 129. On March 11, 2002, Shuta Saito, JAL’s Vice-President of Industry Affairs,
26 reconfirmed JAL’s intent not to “compete” with ANA on non-immunized C-class fares. In
27 January 2003, ANA representatives reconfirmed at a lunch meeting with Amagai that they would
28

1 continue to coordinate those fares with JAL. JAL then requested that ANA raise the fare out of
2 New York (and use as the pretext for doing so a claim that ANA had increased the level of
3 accommodations on its flights).

4 130. The parties effectuated and monitored their conspiracy by exchanging proposals
5 concerning the fare levels for non-immunized “C” class fares before these fares were announced
6 to the public. On March 17, 2004, a JAL employee requested that the ANA-JAL agreements be
7 circulated to all JAL offices in the Americas Region so that all JAL personnel were aware of
8 pricing changes agreed to by JAL and ANA.

9 131. On September 1, 2004, an ANA representative e-mailed JAL representatives a
10 fare chart for ANA’s discount class fares for the forthcoming six-month period. That same ANA
11 representative sent JAL another fare chart in February 2006, before the fares in the chart were
12 made public.

13 132. Employees of ANA and JAL with knowledge of the conspiracy concerning non-
14 immunized business class fares include: Mr. Fukuda of ANA, Cahill, Sun, Amagai, Saito,
15 Kaneko, Fujiki, Ono, and Joan Kumai of JAL, among others.

16 133. Thai Airways joined ANA and JAL to coordinate APEX, ZONE PEX and C-
17 APEX fares from Japan to the United States. Beginning in 2001, Thai Airways representatives
18 sought prior approval or “concurrence” of their carrier fares with the carrier fares of ANA and
19 JAL on flights from Japan to the United States. Concurrence involving routes to and from the
20 United States implicates the antitrust laws of this country and constitutes illegal communication
21 and coordination of prices.

22 134. Every fiscal half-year from at least August 2000 through at least August of 2002,
23 Thai Airways e-mailed representatives of ANA and JAL requesting prior approval (concurrence)
24 for the forthcoming six-month period on ZONE PEX, and occasionally also APEX, fares from
25 Japan to various cities in the western United States, including Las Vegas, Los Angeles, Oakland,
26 Portland, San Diego, San Francisco, and Seattle. In almost all instances, these e-mails attached
27 fare sheets and fare rules for the relevant period.
28

1 135. In an e-mail dated August 20, 2000, Tsuneo Kojima (Thai Airways) wrote to
2 Keeratiroj Sirisap (Thai Airways), Shinji Ono (JAL) and Fukushima (ANA), stating that Thai
3 Airways would send to ANA and JAL its fares and rules of application for the period between
4 October 1, 2000 and March 31, 2001 on certain flights from Tokyo and Osaka to the United
5 States. In the e-mail, Tsuneo Kojima wrote, “[w]e will send fares/rules for USA from TYO/OSA
6 effective 01OCT00 through 31MAR01 as per attached We would appreciate if you can
7 obtain concurrence from JL/NH [JAL/ANA] on fares/rules soonest.” The attachment to the e-
8 mail included ZPEX fares that Plaintiffs allege were subject to the conspiratorial agreement, for
9 LAX [Los Angeles], SFO [San Francisco], LAS [Las Vegas], SEA [Seattle], PDX [Portland],
10 SAN [San Diego] and OAK [Oakland].

11 136. On February 13, 2001, Tsuneo Kojima (Thai Airways) sent an e-mail to
12 Keeratiroj Sirisap (Thai Airways), copying Shinji Ono (JAL) and Akiko Oyama (ANA)
13 regarding concurrence on ZONE PEX fares to the U.S. for the first half of FY 2001. In that e-
14 mail Tsuneo Kojima wrote: “Now we have completed TG Zpex fares/rules from Japan to USA
15 for S2001 We would like to ask you to obtain concurrence from JL/NH [JAL/ANA] as soon
16 as possible . . . and would appreciate your usual kind cooperation and support.” Attached to the
17 e-mail was the proposed ZONE PEX fares for Japan to the U.S. and the rules of application
18 about the ZONE PEX fare.

19 137. On July 25, 2001, Tsuneo Kojima (Thai Airways) sent an e-mail to Keeratiroj
20 Sirisap (Thai Airways), copying Shinji Ono (JAL) and A. Kawaguchi (ANA) regarding ZONE
21 PEX fares for the second half of FY 2001. Similar to the February 13, 2001 e-mail, Tsuneo
22 Kojima wrote on July 25, 2001 that: “[w]e have now completed the fares for TG [Thai Airways]
23 Zone Pex from Japan to USA for 01Oct01 through 31Mar02. Applicable rules remain
24 unchanged. We would like to request you to receive concurrence from JL/NH on our proposal as
25 soon as possible.” Kojima again attached a fare sheet to the e-mail.

26 138. On July 26, 2001, Keeratiroj Sirisap (Thai Airways) sent an e-mail to Shinji Ono
27 (JAL) and Yasuhiro Nishiyama (ANA), copying Tsuneo Kojima (Thai Airways) and Seree
28

1 Pipatchaipoom (Thai Airways) asking for concurrence as to the flights on various city pairs,
2 including flights between Japan and the United States. In his July 26, 2001 e-mail, Keeratiroj
3 Sirisap proposed coordinated fares for the approval of ANA and JAL, writing: “TG [Thai
4 Airways] proposed Z-PEX/APEX/Special Apex fares from Japan to Thailand/MNL/USA for the
5 period of 01Oct01 – 31Mar02.”

6 139. On January 29, 2002, Tsuneo Kojima (Thai Airways) sent Thai Airways’
7 proposed ZONE PEX fares between Narita/Kansai to Los Angeles for the period between April
8 1, 2002, and September 30, 2002, to Keeratiroj Sirisap (Thai Airways), Shinji Ono (JAL), Akiko
9 Kawaguchi (ANA) and Hajime Kuroiwa (Thai Airways). The e-mail requested that Thai
10 Airways’ proposed ZONE PEX fares be proposed to ANA and JAL and indicated that Thai
11 Airways would like to have concurrence from JL/NH [JAL/ANA] as early as possible.

12 140. On August 5, 2002, Tsuneo Kojima (Thai Airways) sent an e-mail to Akiko
13 Oyama (ANA) and Shinji Ono (JAL), copying Shingo Komatsu (Thai Airways) and Hajime
14 Kuriowa (Thai Airways) requesting concurrence on ZONE PEX fares on flights to the U.S. for
15 the second half of FY 2002. In his e-mail, Kojima wrote, “[w]e would like to apply solely for
16 TG [Thai Airways] FLEX fares to the USA for the second half in the same way as for the present
17 term. We have matched NH’s [ANA’s] GET price; therefore, please confirm this, and if you are
18 fine with that, we would like to contact TG headquarters.”

19 141. On August 9, 2002, an e-mail from Tsuneo Kojima (Thai Airways) to Keeratiroj
20 Sirisap (Thai Airways), Shingo Komatsu (Thai Air) and Hajime Kuroiwa (Thai Airways),
21 copying Shinji Ono (JAL) and Akiko Oyama (ANA) confirmed that an agreement had been
22 reached between the three airlines regarding carrier fares from Japan to the U.S.: “[p]lease be
23 informed that TG [Thai Airways] Zone Pex fares/rules to USA for W02/03 have been concluded
24 now which fares/rules agreed with JL/NH [JAL/ANA] at our end.”

25 142. On October 24, 2002, Shinji Ono (JAL) sent an e-mail to Keeratiroj Sirisap (Thai
26 Airways) and Tsuneo Kojima (Thai Airways) responding to Thai Airways’ ZONE-PEX fares
27 from Japan to the U.S. proposed on July 26, 2001: “Regarding your ZPEX fares from JPN to
28

1 USA, we have no objection.” In that e-mail, Shinji Ono also discussed with Keeratiroj Sirisap
2 and Tsuneo Kojima the fact that JAL intended to seek agreement with Philippine Airlines
3 regarding coordinated fares to Manila and also indicated a willingness to coordinate with Thai
4 Airways on carrier fares to Thailand. This is evidence that all coordination efforts from any
5 major airline hub in Asia involved the prior approval of the dominant airline at that hub.

6 143. Singapore Airlines also coordinated carrier fares on flights to the U.S. On August
7 9, 2002, Takashi Oshima (Singapore Airlines) e-mailed Shinji Ono (JAL), writing that “[f]or Los
8 Angeles and Las Vegas fares, we have matched your fares”

9 144. On February 19, 2003, Takashi Oshima (Singapore Airlines) sent an e-mail to
10 Shinji Ono (JAL) asking for concurrence on APEX fares from Tokyo to Los Angeles, writing,
11 “APEX fares in Los Angeles match those of ANA; Taiwan fares match those of Japan Asia
12 Airways; zone fares to Los Angeles and Las Vegas match your company’s fares.” Following
13 this exchange, Singapore Airlines matched exactly JAL’s APEX fares from Tokyo to Los
14 Angeles. After communications with ANA and JAL, Singapore Airlines also matched the
15 ZONE PEX fares charged by ANA and JAL for routes from Tokyo to Los Angeles and Las
16 Vegas for the first half of the 2003 fiscal year.

17 145. KAL also coordinated carrier fares on Japan-U.S. routes. On July 13, 2004, Si
18 Yeon Lee (KAL) sent an e-mail to Takashi Inagaki (JAL) providing him with proposed APEX
19 fares from Tokyo to Los Angeles for the first half of FY2004. “Now, due to fare increases, we
20 are about to file Zone Pex fares from Japan to US and need your concurrence on TYO-LAX
21 portion. All the fares are matching JL fares.” That e-mail included an attachment with
22 agreement upon ZONE PEX prices between Tokyo and Los Angeles. Eight days later, on July
23 21, 2004, Tomomi Kubota (JAL) responded to Si Yeon Lee, stating, “[a]fter reviewing, we
24 would like to offer our official concurrence to your proposal,” indicating JAL’s agreement with
25 KAL’s proposed coordinated price.

26 146. On October 31, 2005, KAL provided JAL with the fare levels from Japan to U.S.
27 In the e-mail to JAL, KAL wrote, “[w]e are matching NW’s [Northwest] level.”
28

1 147. In an e-mail dated October 31, 2005, Takashi Inagaki (JAL) discussed KAL's
2 proposed coordinated fares for flights from Japan to the United States and described JAL's
3 relationship with KAL as one premised on a "gentlemen's agreement." The e-mail also noted
4 that Northwest was matching the fares.

5 148. In a November 1, 2005 e-mail Takashi Inagaki stated again that KAL always
6 agreed to match JAL's fares pursuant to a "gentlemen's agreement." The e-mail specifically
7 referenced fares from Tokyo to Los Angeles.

8 149. China Airlines also sought prior approval from ANA and JAL regarding flights
9 from Tokyo to Honolulu and explicitly sought the coordination of such carrier fares.

10 150. A January 25, 2000 e-mail from Hidetomi Kadoya (JAL) evidenced discussions
11 with China Airlines regarding the agreement on ZONE PEX prices to Honolulu and that the two
12 companies were finalizing the specifics on ZONE PEX prices to Honolulu after agreeing in
13 principle to coordinate ZONE PEX pricing.

14 151. On August 19, 2000, Eugene Yi-Ching Lee (China Airlines) sent an e-mail to
15 Shinji Ono (JAL), with a carbon copy to multiple China Airlines employees, stating that he had
16 recently faxed 20 pages with China Airlines' ZONE PEX, APEX and other carrier fares from
17 Japan to Taiwan, S.E. Asia and Honolulu for the period from October 1, 2000 to March 31,
18 2001. In his e-mail, Eugene Lee asks JAL to review and concur with China Airlines' prices.

19 152. On October 24, 2000, Shinji Ono (JAL) responded to Eugene Lee: "I reviewed all
20 of your documents and concur your Zpex/Apex/carrier IIT fares" except for APEX fares from
21 Tokoname in Japan to Kaohsiung in Taiwan. Shinji Ono goes on to ask, for the Tokoname-
22 Kaohsiung route, that China Airlines agree to the fare set by EG (Japan Asia Airways) on that
23 route. After making that request, Shinji Ono went on to state that "if you will agree with the
24 above matching, EG will concur . . ."

25 153. In a July 27, 2001 e-mail, Katsutaka Fujii (China Airlines) wrote to Shinji Ono
26 (JAL) stating that, "We have received the fares for Hong Kong and Honolulu. Are they final
27 fares? If they are final, we will match and send them to the head office. Thank you."

1 154. On July 30, 2001, Katsutaka Fujii (China Airlines) sent an e-mail to Shinji Ono
 2 (JAL), and various China Airlines employees, including Mei-Wen Lin, Yoshihisa Yamamoto
 3 and Masaru Kunihiro, notifying JAL employees of China Airlines' intention to match JAL's
 4 ZONE PEX and APEX fares from Hong Kong to Honolulu for the second half of FY 2001 and
 5 attached fare sheets with pricing for the referenced fares. Fujii wrote, "[a]s per attached, TYOCI
 6 [China Airlines] will match JL's HKG/HNL PEX/APEX Fare." Amongst the attachments to the
 7 e-mail were coordinated carrier fares between Japan and Honolulu.

8 155. On August 2, 2001, Katsutaka Fujii (China Airlines) e-mailed Shinji Ono (JAL),
 9 Choji Nakamura (JAL), Mei-Wen Lin (China Airlines), Tsugio Arasaki (China Airlines), Kengo
 10 Tanaka (China Airlines), Yoshihisa Yamamoto (China Airlines) and Masaru Kunihiro (China
 11 Airlines), informing JAL that China Airlines was going to match JAL's ZONE PEX and APEX
 12 fares between Tokyo and various destinations including Honolulu. The e-mail identified
 13 matching fares between various city pairs, including flights between Asia and Honolulu.

14 156. On August 7, 2001, Mei-Wen Lin (China Airlines) wrote to Shinji Ono (JAL) and
 15 copying various China Airlines employees, requesting coordination with JAL on various city
 16 pair routes, including the coordination of ZONE PEX and APEX fares between Tokyo and
 17 Honolulu.

18 157. In an October 31, 2001 e-mail, Katsutaka Fujii (China Airlines) wrote to Choji
 19 Nakamura (JAL) and Shinji Ono (JAL) and other China Air employees, stating their proposal for
 20 Special APEX fares to Honolulu. In the e-mail, Katsutaka Fujii wrote, "We will inform you if
 21 there is [sic] any changes, but we match fare and rule with JL."

22 158. In a January 24, 2002 e-mail, Katsutaka Fujii (China Airlines) wrote an internal e-
 23 mail, on which both Shinji Ono and Choji Nakamura of JAL were copied, stating that, "[p]lease
 24 be advised of the ZPEX/APEX fare for S02, which is matched with JL's fare."

25 159. On February 18, 2002, Mei-Wen Lin (China Airlines) sent an e-mail to Shinji
 26 Ono (JAL), Katsutaka Fujii (China Airlines), Masaru Kunihiro (China Airlines), Kengo Tanaka
 27 (China Airlines), Yoshihisa Yamamoto (China Airlines), Tsugio Arasaki (China Airlines) and
 28

1 Kenji Doi (China Airlines) requesting concurrence for ZONE PEX and APEX fares from Tokyo
2 to Honolulu for the first half of FY2002. The last line of the e-mail stated, "HNL ROUTE
3 (MATCHING WITH JL) TYO-HNL ZPEX/APEX."

4 160. On July 29, 2002, Kenji Doi (China Airlines) wrote an e-mail to Shinji Ono (JAL)
5 stating that, "As to the HNL route and the South East Asia route, . . . we will match JAL
6 naturally but we have no information [about it]."

7 161. On August 16, 2002, Mei-Wen Lin (China Airlines) sent an e-mail to Shinji Ono
8 (JAL), copying other China Air employees, requesting concurrence of ZONE PEX, 14 day
9 APEX and 35 day APEX fares from Tokyo to Honolulu for the second half of FY2002. In the e-
10 mail this is expressed by writing, "TYO [Tokyo] to HNL [Honolulu] –
11 ZPEX/APEX14/APEX35."

12 162. On October 24, 2002, Shinji Ono (JAL) responded to Mei-Wen Lin (China
13 Airlines), Masaru Kunihiro (China Airlines) and Kenji Doi (China Airlines) on behalf of JAL
14 explaining JAL had "no objection for the captioned fares" between Tokyo and Honolulu
15 proposed by China Airlines.

16 163. On July 7, 2006, Ai Watanabe (China Airlines) e-mailed Owano Hideo (JAL),
17 copying Kenji Doi (China Airlines), explaining that China Airlines hoped to establish an APEX
18 fare between Tokyo and Honolulu soon. China Airlines requested concurrence from JAL as
19 soon as JAL's routes became available. Watanabe's e-mail indicated he wanted to know when
20 JAL's second half FY2006 fare proposal to Honolulu would be provided, writing, "however,
21 because we soon would like to establish APEX fares for HNL routes . . . could you please let me
22 know when your final fare proposal for the second half is finalized?"

23 164. Northwest and Continental also illegally coordinated carrier fares with other
24 carriers. During a meeting on October 23, 2002, JAL representatives discussed the coordination
25 of carrier fares with Northwest employees regarding coordination between ANA and JAL on C-
26 APEX fares to North America with advance purchase provisions.

1 165. On May 31, 2005, Noboru Hirai (Northwest) sent an e-mail to JAL referencing a
2 May 30, 2005 meeting between Northwest and JAL. The e-mail discussed pricing for fares to
3 Honolulu and Micronesia for the second half of FY2005. For flights from Osaka to Honolulu,
4 Noboru Hirai wrote that he would “seek to coordinate and consider with branch offices for plus
5 5000 yen.” For flights from Tokyo to Honolulu, Mr. Hirai wrote that he would “seek
6 coordination within a range from about the same as last year to about plus 2000 yen.” For fares
7 from Tokyo to Micronesia, Mr. Hirai wrote, “[d]ecision will be made after CO
8 [Continental]/JAL price coordination. Desire price increase of about 5% . . . AP [APEX] would
9 continue.”

10 166. The coordination of fares between Japan and the United States alleged herein is
11 just one example of a wide-ranging conspiracy to coordinate passenger fares on flights between
12 Asia/Oceania and the United States.

13 167. The airline industry, particularly in Asia, operates through the use of a hub
14 system. Each airline maintains one or more hubs in which it is the primary airline serving that
15 destination. For example, Singapore Airlines’ hub is at Singapore Changi International Airport
16 and Cathay Pacific’s hub is at Hong Kong International Airport. For each of these hubs,
17 concurrence communications relating to the coordination of carrier fares takes place with the
18 primary airline at each hub for flights between that hub and the United States. In other words,
19 the coordination of carrier fares from Thailand’s Bangkok-Suvarnabhumi Airport to the United
20 States involves communications amongst the Defendant carriers and Thai Airways, the primary
21 airline at that hub. These coordination efforts are similar to those that occurred for flights from
22 Japan to the United States and involved communications and exchanges of information that
23 allowed the members of the conspiracy to coordinate the carrier fares charged from these
24 international hubs to the United States.

25 168. For example, at a September 1, 2005 meeting of the Thailand BAR, the attendees
26 complained that fares to and from Thailand were substantially below fares charged to other
27
28

1 regional destinations. The attendees were urged to support the creation of a subgroup to examine
2 base fare prices and to otherwise discuss each other's fares.

3 169. Other airlines have also suggested that the coordination involved in this case extends
4 far beyond routes between the Japan and the United States. An e-mail from an employee of
5 Singapore Airlines circulated to a number of "Airline Partners"—some of whom have been
6 identified as JAL, Malaysian Airlines, Thai Airways, and Vietnam Airlines—stated that "[e]ven
7 if a carrier would not be able to increase the fares from their country, it would benefit from fare
8 increases adopted ex other countries." Additionally, a JAL e-mail dated November 8, 2004,
9 described the assistance that JAL will provide to other airlines concerning pricing for "arrivals
10 from Europe, the Americas and Asia." At "overseas" hubs of other carriers, JAL said it would
11 "follow" the lead of other carriers.

12 170. Other examples of coordinated pricing activity throughout Asia are set forth in the
13 following section.

14 **2. Fuel Surcharges**

15 171. Defendants' discussions concerning the implementation of and/or amount of fuel
16 surcharges (as opposed to certain base fares) have never been immunized by IATA Tariff
17 Coordination Conferences, though as described below, there was an attempt to obtain immunity
18 for such discussions by the Defendants. The fuel surcharge conspiracy was facilitated by
19 discussions and agreements reached by the Defendants and others at various IATA, AAPA, and
20 BAR meetings in Hong Kong, Manila, Malaysia, Thailand, and elsewhere.

21 **a. Defendants' Unsuccessful Effort To Obtain Immunity For Fuel** 22 **Surcharge Agreements**

23 172. As early as December 31, 2000, Defendants, through the Malaysian BAR
24 undertook collective efforts to impose fuel surcharges, though these efforts were short lived and
25 largely unsuccessful.

26 173. However, during the first half of 2003, Defendants, through the Philippine BAR,
27 again undertook collective efforts to obtain governmental approval of a surcharge from the
28

Philippines Department of Justice. On May 16, 2003, Defendants' request for approval of fuel surcharges was "declined."

174. Thereafter, during an IATA Special Composite Meeting of Passenger Tariff Coordinating Conferences held in Geneva, Switzerland from July 14 through 18, 2003, participating members adopted Resolution 001w titled "Special Enabling Resolution (Surcharges)." Resolution 001w would have established a procedure by which IATA members could quickly agree to and then implement fuel, security, and other surcharges on IATA fares. Resolution 001w had an intended effective date of April 1, 2004 so that IATA and its members could obtain approval from various government agencies, including the DOT, which has the authority to immunize agreements reached at Tariff Conferences from scrutiny under the Sherman Act.

175. Thirty-six air carriers voiced support "in principle" for a collective fuel surcharge, including Air France, British Airways, China Airlines, JAL, KAL, KLM, Lufthansa, ANA, Northwest, Air New Zealand, Qantas, and Thai Airways. There was no opposition. The participants then commenced discussions concerning the specific wording of the proposal. Several air carriers objected to minor details concerning the implementation and operation of the fuel surcharge. Defendants and non-defendant co-conspirators ultimately voting in favor of Resolution 001w included: Air New Zealand, ANA, China Airlines, EVA, JAL, Qantas, and Thai Airways. Several members abstained from voting and no member opposed the resolution.

176. On August 25, 2003, IATA filed Resolution 001w with the DOT and sought immunity for the agreements set forth in it. The DOT did not act on the proposal.

177. On May 27, 2004 Giovanni Bisignani of IATA, stated:

On average, fuel accounts for 16% of airline operating costs. Fuel prices are 55% higher than one year ago. This could add between US\$8 and US\$12 billion to our annual fuel bill and threatens to strangle our modest projected return to profitability. Instead of flying high, we could be left swimming in red ink . . . The current crisis resulting from sky high fuel prices once again highlights the industry's vulnerability to external shocks. . . . We need to build a new industry structure capable of withstanding external shocks and delivering sustained profitability.

1 178. On May 28, 2004, IATA held a Special Composite Meeting of Passenger Tariff
2 Coordinating Conferences in Geneva, Switzerland. Minutes of the meeting reflect that at least
3 seven airlines, including Cathay Pacific and KAL, sought to achieve an agreement with respect
4 to fuel surcharges ranging from US\$4 per sector to US\$18 for one way travel. Other airlines
5 proposed raising passenger fares instead. IATA's Secretary reminded its airline members that
6 Resolution 001w had not been approved by all necessary governmental entities, so collective
7 agreements concerning fuel surcharges were not immunized. Mr. McEwen, Manager of IATA
8 Ticketing Services, then explained to the meeting's participants that IATA was nonetheless
9 developing a methodology for collection of fuel surcharges. Thereafter, the airlines agreed to
10 increase immunized IATA base fares on interline tickets to offset increased fuel costs. Implicit
11 in this change in tactics was an understanding by Defendants that non-immunized base fares
12 would also be raised.

13 179. On April 29, 2005, another Special Composite Meeting of Passenger Tariff
14 Coordinating Conferences was held in Geneva, Switzerland. At the meeting, Cathay Pacific, Air
15 France and others again sought agreement on fuel surcharges. Again, the airlines were advised
16 that Resolution 001w had not been approved by all necessary governmental entities and again the
17 airlines raised base fares for immunized IATA interline tickets to offset increased fuel costs.
18 Again, there was an implicit understanding that non-immunized base fares would also be raised.

19 180. Despite IATA's efforts to obtain immunity for the collective rate-setting of fuel
20 surcharges, the DOT never acted on IATA's request, and several years later, on March 9, 2007,
21 IATA quietly moved to withdraw the resolution from further consideration by the DOT.

22 **b. Defendants' Fuel Surcharges Which Commenced In 2004 Contrast**
23 **With Their Conduct In The Preceding Years**

24 181. Prior to 2004, the Defendants had not successfully imposed fuel surcharges on top
25 of the price of an air passenger ticket. However, as noted above, collusive efforts to attempt to
26 do so commenced in or about 2000 through the Asian BAR organizations and IATA. These
27 efforts began to have an effect in May of 2004.
28

1 182. On May 11, 2004, Qantas publicly announced that it was introducing a fuel
2 surcharge, effective on May 17, 2004. The very next day, Qantas' partner in the Oneworld
3 Alliance, British Airways, also announced that it was implementing a fuel surcharge. On May
4 12, 2004, Air New Zealand announced that it, too, was implementing a fuel surcharge, effective
5 May 17, 2004.

6 183. The decision to introduce fuel surcharges required prior consideration by senior
7 executives and planning committees. Computers must be programmed to accept fuel surcharges,
8 and marketing and customer service departments must prepare for the change. The rapid fire
9 introduction of these fuel surcharges over a period of, at most, 24 hours is not consistent with
10 independent, uncoordinated actions by Air New Zealand, Qantas, and British Airways.

11 184. Thus, in the late-spring/early summer, Air New Zealand imposed a fuel surcharge
12 of approximately US \$13.00, Qantas imposed a fuel surcharge of US \$15.00, Cathay Pacific
13 imposed a fuel surcharge of approximately US \$14.00, Thai Airways imposed a fuel surcharge of
14 approximately US \$15.00, and non-Defendant co-conspirator UAL imposed a fuel surcharge of
15 US \$15.00. The surcharge amounts cited herein can and do vary based on differences in the
16 relative valuation of foreign currencies over time and the assumptions underlying currency to
17 currency comparisons. They also vary based on geography and flight routing as well as on
18 airline perceptions about the tolerance level of regulators and passengers for these surcharges.

19 185. Discreet examples of contemporaneous fuel surcharge increases exist for other
20 Defendants as well. In October-November of 2004, Qantas imposed a fuel surcharge of
21 approximately US \$21.22, Singapore Airlines imposed a fuel surcharge of approximately US
22 \$22.00, and Thai Airways imposed a fuel surcharge of approximately US \$20.00.

23 186. On February 1, 2005, ANA and JAL added a US \$24.37 fuel surcharge on
24 passenger flights between North America and Japan. On the same day, Singapore Airlines added
25 a fuel surcharge of approximately US \$22.00 on international air passenger tickets.

26 187. In March of 2005, co-conspirator Northwest and Qantas introduced fuel
27 surcharges of US \$35.00.
28

188. In July of 2005, ANA and JAL imposed a fuel surcharge of US \$48.00 and Singapore Airlines imposed a fuel surcharge of approximately US \$45.00, as did non-defendant co-conspirator Northwest.

189. In September-October of 2005, Cathay Pacific imposed a fuel surcharge of approximately US \$45.30 and co-conspirator Northwest imposed a fuel surcharge of US \$45.00.

190. In the spring of 2006, ANA and JAL increased their respective fuel surcharges to US \$66.00. Qantas raised its surcharge to approximately US \$65.00, as did Air New Zealand, Thai Airways, and EVA.

191. During the summer 2006 travel season, Singapore Airlines raised its fuel surcharge to approximately US \$60.00 (on long-haul routes between Japan and Los Angeles), Malaysian Airlines raised its fuel surcharge to approximately US \$60.00 (on long-haul routes between Taipei and Los Angeles), and Cathay Pacific raised its fuel surcharge to approximately US \$61.70.

192. Later that summer, Thai Airways raised its fuel surcharge to approximately US \$90.00 and Malaysian Airlines raised its fuel surcharge to approximately US \$92.00 (on routes between Malaysia and the U.S.), non-defendant co-conspirator Northwest raised its fuel surcharge to US \$90.00, non-defendant co-conspirator UAL raised its fuel surcharge to US \$90.00, China Airlines raised its fuel surcharge to approximately US \$95.00, and Singapore Airlines raised its fuel surcharge to approximately US \$90.00 (on routes between Singapore and the U.S.).

193. Moreover, during much of the Class Period, the Defendants repeatedly charged identical fuel surcharges for passenger traffic from Hong Kong, including to the United States:

Air Carrier	Fuel Surcharge Amount	Effective Date
Air New Zealand	HKD481 per coupon (long haul) (approximately US \$62.00)	August 1, 2006
Air France	HKD468 per coupon	August 1, 2006
Qantas	HKD481 per coupon (long haul)	August 1, 2006
British Airways	HKD481 per coupon	August 1, 2006

Air Carrier	Fuel Surcharge Amount	Effective Date
Cathay Pacific	Short haul: HKD117 per coupon Long haul: HKD481 per coupon	August 1, 2006
Singapore Airlines	HK/SIN HKD117 per coupon (short haul) HK/SFO HKD481 per coupon (long haul)	August 1, 2006
ANA	HKD117 per coupon (short haul)	August 1, 2006
China Airlines	HKD117 per coupon (short haul)	August 1, 2006
Continental Airlines	HKD481 per coupon	August 1, 2006
EVA	HKD117 per coupon (short haul)	August 1, 2006
JAL	HKD117 per coupon (short haul)	August 1, 2006
KLM	HKD481 per coupon	August 1, 2006
Lufthansa	HKD481 per coupon	August 1, 2006
Malaysian Airlines	HKD117 per coupon (short haul)	August 1, 2006
Philippine Airlines	HKD481 per coupon	August 1, 2006
Swiss International	HKD481 per coupon	August 1, 2006
Thai Airways	HKD117 per coupon (short haul)	August 1, 2006
Vietnam Airlines	HKD117 per coupon	August 1, 2006
Air France	HKD481 per coupon	October 1, 2006
Qantas	HKD481 per coupon (long haul)	October 1, 2006
Singapore Airlines	HK/SIN HKD117 per coupon (short haul) HK/SFO HKD481 per coupon (long haul)	October 1, 2006
ANA	HKD117 per coupon (short haul)	October 1, 2006
British Airways	HKD481 per coupon	October 1, 2006
China Airlines	HKD117 per coupon (short haul)	October 1, 2006
Continental Airlines	HKD481 per coupon	October 1, 2006
EVA	HKD117 per coupon (short haul)	October 1, 2006
JAL	HKD117 per coupon (short haul)	October 1, 2006
KLM	HKD481 per coupon	October 1, 2006
Lufthansa	HKD481 per coupon	October 1, 2006

Air Carrier	Fuel Surcharge Amount	Effective Date
Malaysian Airlines	HKD117 per coupon (short haul)	October 1, 2006
Philippine Airlines	HKD117 per coupon	October 1, 2006
Swiss International	HKD481 per coupon	October 1, 2006
Thai Airways	HKD117 per coupon (short haul)	October 1, 2006
Vietnam Airlines	HKD481 per coupon	October 1, 2006
Air New Zealand	HKD466 per coupon (long haul)	December 1, 2006
Air France	HKD466 per coupon (long haul)	December 1, 2006
British Airways	HKD466 per coupon (long haul)	December 1, 2006
China Airlines	HKD113 per coupon (short haul)	December 1, 2006
Continental Airlines	HKD466 per coupon (long haul)	December 1, 2006
KLM	HKD455 per coupon (long haul)	December 1, 2006
Lufthansa	HKD466 per coupon (long haul)	December 1, 2006
Philippine Airlines	HKD113 per coupon (short haul)	December 1, 2006
Qantas	HKD466 per coupon (long haul)	December 1, 2006
Singapore Airlines	HK/SIN HKD113 per coupon (short haul) HK/SFO HKD466 per coupon (long haul)	December 1, 2006
Swiss International	HKD466 per coupon (long haul)	December 1, 2006
ANA	HKD113 per coupon (short haul)	December 1, 2006
China Airlines	HKD113 per coupon (short haul)	December 1, 2006
EVA	HKD113 per coupon (short haul)	December 1, 2006
JAL	HKD113 per coupon (short haul)	December 1, 2006
Malaysian Airlines	HKD113 per coupon (short haul)	December 1, 2006
Thai Airways	HKD113 per coupon (short haul)	December 1, 2006
Vietnam Airlines	HKD113 per coupon (short haul)	December 1, 2006

Air Carrier	Fuel Surcharge Amount	Effective Date
Air New Zealand	HKD438 per coupon (long haul)	February 1, 2007
Air France	HKD438 per coupon (long haul)	February 1, 2007
British Airways	HKD438 per coupon (long haul)	February 1, 2007
Continental Airlines	HKD438 per coupon (long haul)	February 1, 2007
KLM	HKD438 per coupon (long haul)	February 1, 2007
Lufthansa	HKD438 per coupon (long haul)	February 1, 2007
Philippine Airlines	HKD106 per coupon (short haul)	February 1, 2007
Qantas	HKD438 per coupon (long haul)	February 1, 2007
Cathay Pacific	Short haul: HKD106 per coupon (short haul) Long haul: HKD438 per coupon	February 1, 2007
Singapore Airlines	HK/SIN HKD106 per coupon (short haul) HK/SFO HKD438 per coupon	February 1, 2007
Swiss International	HKD438 per coupon (short haul)	February 1, 2007
ANA	HKD106 per coupon	February 1, 2007
China Airlines	HKD106 per coupon (short haul)	February 1, 2007
EVA	HKD106 per coupon (short haul)	February 1, 2007
JAL	HKD106 per coupon (short haul)	February 1, 2007
Malaysian Airlines	HKD106 per coupon (short haul)	February 1, 2007
Thai Airways	HKD106 per coupon (short haul)	February 1, 2007
Vietnam Airlines	HKD438 per coupon (short haul)	February 1, 2007
Air New Zealand	HKD420 per coupon (long haul)	April 1, 2007
Air France	HKD420 per coupon (long haul)	April 1, 2007
British Airways	HKD420 per coupon (long haul)	April 1, 2007
Continental Airlines	HKD420 per coupon (long haul)	April 1, 2007

Air Carrier	Fuel Surcharge Amount	Effective Date
Lufthansa	HKD420 per coupon (long haul)	April 1, 2007
KLM	HKD420 per coupon (long haul)	April 1, 2007
Philippine Airlines	HKD102 per coupon (short haul)	April 1, 2007
Qantas	HKD420 per coupon (long haul)	April 1, 2007
Cathay Pacific	Short haul: HKD102 per coupon Long haul: HKD420 per coupon	April 1, 2007
Singapore Airlines	HK/SIN HKD102 per coupon (short haul) HK/SFO HKD420 per coupon (long haul)	April 1, 2007
Swiss International	HKD420 per coupon (long haul)	April 1, 2007
ANA	HKD102 per coupon (short haul)	April 1, 2007
China Airlines	HKD102 per coupon (short haul)	April 1, 2007
EVA	HKD102 per coupon (short haul)	April 1, 2007
Malaysian Airlines	HKD102 per coupon (short haul)	April 1, 2007
Thai Airways	HKD102 per coupon (short haul)	April 1, 2007
Vietnam Airlines	HKD102 per coupon (short haul)	April 1, 2007
Air New Zealand	HKD412 per coupon (long haul)	June 1, 2007
Air France	HKD412 per coupon (long haul)	June 1, 2007
British Airways	HKD412 per coupon (long haul)	June 1, 2007
Continental Airlines	HKD412 per coupon (long haul)	June 1, 2007
Philippine Airlines	HKD100 per coupon (short haul)	June 1, 2007
Qantas	HKD412 per coupon (long haul)	June 1, 2007

Air Carrier	Fuel Surcharge Amount	Effective Date
Cathay Pacific	Short haul: HKD100 per coupon Long haul: HKD412 per coupon	June 1, 2007
Singapore Airlines	HK/SIN HKD100 per coupon (short haul) HK/SFO HKD412 per coupon (long haul)	June 1, 2007
Swiss International	HKD100 per coupon (short haul)	June 1, 2007
ANA	HKD100 per coupon (short haul)	June 1, 2007
China Airlines	HKD100 per coupon (short haul)	June 1, 2007
EVA	HKD100 per coupon (short haul)	June 1, 2007
Malaysian Airlines	HKD100 per coupon (short haul)	June 1, 2007
Thai Airways	HKD100 per coupon (short haul)	June 1, 2007
Vietnam Airlines	HKD100 per coupon (short haul)	June 1, 2007
Air New Zealand	HKD424 per coupon (long haul)	August 1, 2007
Air France	HKD424 per coupon (long haul)	August 1, 2007
British Airways	HKD424 per coupon (long haul)	August 1, 2007
Continental Airlines	HKD424 per coupon (long haul)	August 1, 2007
KLM	HKD424 per coupon (long haul)	August 1, 2007
Lufthansa	HKD424 per coupon (long haul)	August 1, 2007
Philippine Airlines	HKD103 per coupon (short haul)	August 1, 2007
Qantas	HKD424 per coupon (long haul)	August 1, 2007
Cathay Pacific	Short haul: HKD103 per coupon Long haul: HKD424 per coupon	August 1, 2007
Singapore Airlines	HK/SIN HKD103 per coupon (short haul) HK/SFO HKD424 per coupon (long haul)	August 1, 2007

Air Carrier	Fuel Surcharge Amount	Effective Date
Swiss International	HKD424 per coupon (long haul)	August 1, 2007
ANA	HKD103 per coupon (short haul)	August 1, 2007
China Airlines	HKD103 per coupon (short haul)	August 1, 2007
EVA	HKD103 per coupon (short haul)	August 1, 2007
JAL	HKD103 per coupon (short haul)	August 1, 2007
Malaysian Airlines	HKD103 per coupon (short haul)	August 1, 2007
Thai Airways	HKD103 per coupon (short haul)	August 1, 2007
Air New Zealand	HKD428 per coupon (long haul)	October 1, 2007
Air France	HKD428 per coupon (long haul)	October 1, 2007
British Airways	HKD428 per coupon (long haul)	October 1, 2007
Continental Airlines	HKD428 per coupon (long haul)	October 1, 2007
KLM	HKD428 per coupon (long haul)	October 1, 2007
Lufthansa	HKD428 per coupon (long haul)	October 1, 2007
Philippine Airlines	HKD104 per coupon	October 1, 2007
Qantas	HKD428 per coupon (long haul)	October 1, 2007
Cathay Pacific	Short haul: HKD104 per coupon Long haul: HKD428 per coupon	October 1, 2007
Singapore Airlines	HK/SIN HKD104 per coupon (short haul) HK/SFO HKD428 per coupon (long haul)	October 1, 2007
Swiss International	HKD428 per coupon (long haul)	October 1, 2007
ANA	HKD104 per coupon (short haul)	October 1, 2007
China Airlines	HKD104 per coupon (short haul)	October 1, 2007
EVA	HKD104 per coupon (short haul)	October 1, 2007

Air Carrier	Fuel Surcharge Amount	Effective Date
JAL	HKD104 per coupon (short haul)	October 1, 2007
Malaysian Airlines	HKD104 per coupon (short haul)	October 1, 2007
Thai Airways	HKD104 per coupon	October 1, 2007
Vietnam Airlines	HKD104 per coupon	October 1, 2007
Air New Zealand	HKD466 per coupon (long haul)	December 1, 2007
Air France	HKD466 per coupon (long haul)	December 1, 2007
British Airways	HKD466 per coupon (long haul)	December 1, 2007
Continental Airlines	HKD466 per coupon (long haul)	December 1, 2007
KLM	HKD466 per coupon (long haul)	December 1, 2007
Lufthansa	HKD466 per coupon (long haul)	December 1, 2007
Philippine Airlines	HKD113 per coupon (short haul)	December 1, 2007
Qantas	HKD466 per coupon (long haul)	December 1, 2007
Cathay Pacific	Short haul: HKD113 per coupon Long haul: HKD466 per coupon	December 1, 2007
Singapore Airlines	HK/SIN HKD113 per coupon (short haul) HK/SFO HKD466 per coupon (long haul)	December 1, 2007
Swiss International	HKD466 per coupon (long haul)	December 1, 2007
ANA	HKD113 per coupon (short haul)	December 1, 2007
China Airlines	HKD113 per coupon (short haul)	December 1, 2007
EVA	HKD113 per coupon (short haul)	December 1, 2007
JAL	HKD113 per coupon (short haul)	December 1, 2007
Malaysian Airlines	HKD113 per coupon (short haul)	December 1, 2007
Thai Airways	HKD113 per coupon (short haul)	December 1, 2007
Vietnam Airlines	HKD113 per coupon (short haul)	December 1, 2007

Air Carrier	Fuel Surcharge Amount	Effective Date
Air New Zealand	HKD508 per coupon (long haul)	February 1, 2008
Air France	HKD508 per coupon (long haul)	February 1, 2008
British Airways	HKD508 per coupon (long haul)	February 1, 2008
Continental Airlines	HKD508 per coupon (long haul)	February 1, 2008
KLM	HKD508 per coupon (long haul)	February 1, 2008
Lufthansa	HKD508 per coupon (long haul)	February 1, 2008
Philippine Airlines	HKD123 per coupon (short haul)	February 1, 2008
Qantas	HKD508 per coupon (long haul)	February 1, 2008
Cathay Pacific	Short haul: HKD123 per coupon (short haul) Long haul: HKD508 per coupon	February 1, 2008
Singapore Airlines	HK/SIN HKD123 per coupon (short haul) HK/SFO HKD508 per coupon (long haul)	February 1, 2008
Swiss International	HKD508 per coupon (long haul)	February 1, 2008
ANA	HKD113 per coupon (short haul)	February 1, 2008
China Airlines	HKD123 per coupon	February 1, 2008
EVA	HKD123 per coupon	February 1, 2008
JAL	HKD113 (2/1/08 – 2/9/08) per coupon (short haul) HKD123 (2/10/08 – 3/31/08) per coupon	February 1, 2008
Malaysian Airlines	HKD123 per coupon (short haul)	February 1, 2008
Thai Airways	HKD123 per coupon (short haul)	February 1, 2008
Vietnam Airlines	HKD123 per coupon (short haul)	February 1, 2008
Air New Zealand	HKD518 per coupon (long haul)	April 1, 2008
Air France	HKD518 per coupon (long haul)	April 1, 2008
British Airways	HKD518 per coupon (long haul)	April 1, 2008

Air Carrier	Fuel Surcharge Amount	Effective Date
Continental	HKD518 per coupon (long haul)	April 1, 2008
KLM	HKD518 per coupon (long haul)	April 1, 2008
Lufthansa	HKD518 per coupon (long haul)	April 1, 2008
Philippine Airlines	HKD125 per coupon (short haul)	April 1, 2008
Qantas	HKD518 per coupon (long haul)	April 1, 2008
Cathay Pacific	Short haul: HKD125 per coupon Long haul: HKD518 per coupon	April 1, 2008
Singapore Airlines	HK/SIN HKD125 per coupon (short haul) HK/SFO HKD518 per coupon (long haul)	April 1, 2008
Swiss International	HKD518 per coupon (long haul)	April 1, 2008
ANA	HKD125 per coupon (short haul)	April 1, 2008
China Airlines	HKD125 per coupon (short haul)	April 1, 2008
EVA	HKD125 per coupon (short haul)	April 1, 2008
JAL	HKD125 per coupon (short haul)	April 1, 2008
Malaysian Airlines	HKD125 per coupon (short haul)	April 1, 2008
Thai Airways	HKD125 per coupon (short haul)	April 1, 2008
Vietnam Airlines	HKD125 per coupon (short haul)	April 1, 2008

c. Fuel Surcharges Were Implemented And Raised Through Collective Action

194. During and after various BAR meetings in Thailand, the Philippines, Malaysia, and Hong Kong, the Defendants exchanged information about the imposition of fuel surcharges and reached express and tacit agreements about whether to impose fuel surcharges, the amounts of the surcharges, and the timing of their imposition. These fuel surcharges included surcharges imposed on flights to and from the United States.

1 195. Defendants Air New Zealand, Air France, ANA, Cathay Pacific, China Airlines,
2 Continental Airlines, EVA, JAL, Malaysian Airlines, Philippine Airlines, Qantas, Singapore
3 Airlines, Thai Airways, and Vietnam Airlines and non-defendant co-conspirators British
4 Airways, Lufthansa, and Swiss International are all members of BAR HK which facilitated
5 agreements to coordinate fuel surcharge pricing by the Defendants through its “Airline Charges
6 Sub-Committee” on a bi-monthly basis during at least a portion of the Class Period alleged
7 herein. Additional meetings were facilitated by the BAR organizations in Thailand, Philippines,
8 and Malaysia. The agreements reached at these formal meetings (which included agreements
9 with respect to flights to and from the United States) were reinforced through additional
10 agreements between the conspirators.

11 196. For example, on or before May 17, 2004, the exact date of which is unknown to
12 Plaintiffs, a representative of Philippine Airlines (Ida Vinas) circulated a request to its “Airline
13 Partners” in which Philippine Airlines asked: “Are you considering a fuel-related fare increase
14 or a fixed amount?” On May 17, 2004, Hary Suhardi of Garuda Airlines responded to this
15 request and copied a number of the “Airline Partners,” some of whom have been identified as
16 Kim Lye of Singapore Airlines, “Laurence” of Malaysian Airlines, “Sahhiran” of Malaysian
17 Airlines, “Seree” of Thai Airways, “trangtt.pmd” of Vietnam Airlines and Anzai Yoshharu of
18 JAL. In his response, the Garuda Airlines employee expressed concern that his government
19 would not like to “see this,” referring to implementation of a fuel surcharge. Singapore Airlines
20 then responded that while it had not taken any action yet, the company “may match national
21 carriers practice” and that “IATA has called for a Special Meeting. Believe it is beneficial for all
22 carriers to support the IATA Meeting. Even if a carrier would not be able to increase the fares
23 from their country, it would benefit from fare increases adopted ex other countries.” Vietnam
24 Airlines (Tran Thu Hein) then noted that it had not taken any action yet. “However, I am not
25 sure that we can maintain the current situation if fuel prices continue to escalate.”

26 197. The next day, Tuesday, May 18, 2004, at the Thai BAR meeting in the Thai
27 Airways office in Bangkok, the Thai BAR chairman, Suthep Suebsantiwongse, advised that
28

1 implementation of fuel surcharges would not be opposed by Thai regulators so long as the total
 2 ticket price remained below IATA immunized fare levels. Mr. Suebsantiwongse proposed
 3 benchmarks and a formula for fuel surcharges. The participants agreed to “come up with a
 4 proposal . . . with a target implementation date of 1st June 2004.” Each of the BAR members
 5 was asked to check with their superiors about the palatability of fuel surcharges, with “[r]esults
 6 to be collated next Monday, 24 May.” During the meeting, the attendees discussed surcharges
 7 for domestic, regional and international (including United States) flights. The latter was
 8 proposed to start at US\$15. The formula proposed was that if fuel costs were up or down by
 9 20% over two consecutive weeks, the surcharge would change correspondingly by US\$2.50.
 10 Mr. Suebsantiwongse stated that success depended on “airline unity in practice.” It was
 11 specifically noted that the United States carriers in attendance could participate in discussions
 12 about implementing a fuel surcharge, but could not discuss rates.

13 198. According to the minutes for the May 18 meeting, participants included
 14 representatives of Thai Airways (Suthep Suebsantiwongse, Pandit Chanapai), Qantas (Julianne
 15 Rogers, J. Louisi Moser), EVA (Thira K.) British Airways (Julianne Rogers, J. Louisi Moser),
 16 UAL (Warren Gerig, left meeting before specific fuel surcharges discussed), Air France
 17 (Smartchai Tuchinda), China Airlines (Nelson Fang), Cathay Pacific (Yongyut Lujintanon), JAL
 18 (Kamol V.), KAL (James K.C. Yeung), KLM (Ihab Sourial), Lufthansa (Wolfgang Schmidt),
 19 ANA (Somnuek Asavaveeradej), Northwest (Sarathool M., left meeting before specific fuel
 20 surcharges discussed), Asiana (Vorakit Nivatwong), and Philippine Airlines (Dell Merano,
 21 Vatchara Silpohevagitja), among others. A complete list is set forth in Appendix B.

22 199. On May 24, 2004, Carol Phatoomros (Thai Airways) followed up the May 18
 23 Thai BAR meeting with an e-mail to the meeting participants and others, including American
 24 Airlines (Prajak Burarak, Chaichan Khongsrithong) and EVA Airways. The e-mail attached a
 25 letter that Thai Airways was sending to the Thai Department of Transport. The letter stated in
 26 part that “[t]he members of the Board of Airlines Representatives at a meeting on 18th May
 27 agreed that unless otherwise instructed by their Head Offices . . . they would apply the following
 28

1 fuel surcharges adapting the fuel price index methodology of calculating the surcharge
2 US\$15.00 for intercontinental flights. The fuel surcharge will be on a per sector basis”

3 These surcharges included surcharges on flights to and from the United States. The complete list
4 of recipients of this e-mail is set forth in Appendix C.

5 200. A number of Defendants acquiesced to this letter, which was sent out on May 26,
6 2004.

7 201. On June 7, 2004, Thai Airways sent an e-mail confirming the imposition of fuel
8 surcharges as previously discussed by Thailand BAR members. The e-mail further noted that
9 “[t]he surcharge amounts are as agreed by BAR members at the BAR meeting on 18May04 . . .”

10 202. Thailand was not the only country in which collusive action was being taken on
11 fuel surcharges in 2004. On May 21, 2004, at a meeting of the Philippine BAR, the issue of fuel
12 surcharges on passenger fares was again discussed by the meeting’s participants. Philippine
13 Airlines advocated for a US\$6.00 per segment, which would include flights to and from the
14 United States. Other carriers were concerned that this would disadvantage carriers with multiple
15 stops on transpacific routes. Philippine Airlines was seeking to introduce the fuel surcharge on
16 June 1, 2004.

17 203. On May 25, 2004, Estrellita O. Inoturan from the Manilla BAR and a manager in
18 Philippine Airlines’ Tariffs, Revenue Management Department sent an e-mail to a JAL
19 employee further discussing the intended surcharge, the effective date, and method of
20 implementation (as a separate YQ element on the passenger’s bill). The e-mail asked for
21 confirmation that the recipients would agree to it. A follow-up e-mail by Joanne Sotocinal of
22 Philippine Airlines noted that Swiss International had agreed to imposition of the surcharge. A
23 complete list of the recipients of this e-mail is set forth in Appendix F.

24 204. On May 26, 2004, Terada Haruhiku (JAL) indicated in an e-mail that “[w]e do not
25 oppose PR’s [Philippine Airlines’] adoption of the fuel Surcharge.”

26 205. Also in May of 2004, the members of the Malaysia BAR exchanged information
27 regarding a fuel surcharge. Malaysian Airlines wanted a \$50 Malay (roughly US \$14.00)
28

1 surcharge per sector (including North America), effective June 1. EVA proposed a surcharge as
2 well. These surcharges included surcharges on flights to and from the United States.

3 206. Various communications reflect collusion among numerous air carriers with
4 respect to fuel surcharges. On October 29, 2004, Hirashi Rie (JAL) sent an e-mail confirming
5 that Air France would begin collection of a 10 Euro fuel surcharge on international flights. An e-
6 mail earlier in the day confirmed that Lufthansa had increased its fuel surcharge for international
7 carriage from 7 Euros to 17 Euros and that British Airways had increased its fuel surcharge from
8 £6 to £10.

9 207. Another e-mail of that same date from Liu Zheng (JAL) to Mr. Yamasaki
10 confirms that China Airlines will start collection of fuel surcharge for the “China-America” route
11 of US\$14.00 and that KAL had started imposing a fuel surcharge of US\$25.00 for departures
12 from the United States on October 25, 2004. The same e-mail noted that Qantas had increased
13 its fuel surcharge for the “America routes” to US\$21.30, effective October 20, 2004.

14 208. On November 1, 2004, Naoma Kaori (JAL) sent an e-mail confirming that she
15 had communicated with American Airlines, UAL, Delta, Continental, and Northwest and that
16 these airlines had imposed fuel surcharges of US\$25.00 on transpacific routes, except to/from
17 Japan, where the fuel surcharge was US\$5.00. With the exception of Northwest, these
18 surcharges were not expressly described as “fuel surcharges.” The same e-mail noted that
19 Philippine Airlines was also imposing a US\$25.00 fuel surcharge, effective for tickets issued on
20 and after October 22, 2004, and that Thai Airways was introducing a fuel surcharge of
21 US\$19.00, effective November 1, 2004, for routes to and from the United States. Ms. Kaori was
22 also able to confirm through ATPCO, a tariff publication company owned by Air France,
23 American Airlines, British Airways, Continental, JAL, Delta, KLM, Lufthansa, Northwest,
24 Swiss International, UAL, and others, that Thai Airways was implementing a fuel surcharge of
25 US\$15.00 one way to and from the United States, and that Singapore Airlines was collecting a
26 US\$17.00 fuel surcharge to and from the United States.

1 209. On June 15, 2004, Akira Mori (JAL) responded to an inquiry from Vietnam
2 Airlines (Tran Thu Hien) regarding ANA's fuel surcharge intentions. Mr. Mori stated that JAL
3 was planning on implementing Vietnam Airlines' "captioned surcharge from July 1, 2004" and
4 that ANA "will most likely match us." A subsequent JAL e-mail from Nakano Hoshiko dated
5 June 22, 2004 noted that "[w]e have a sensitive relationship with the authority and we do not
6 want to have any arguments about the set-up of carrier fares etc." On September 21, 2004, Mr.
7 Yamasaki of JAL wrote to Mohamed Habib of Northwest asking why the DOT was reluctant to
8 authorize fuel surcharges for passenger tickets. Mr. Habib quickly responded that same day and
9 inquired: "Is there interest in your company to implement fuel surcharge?"

10 210. On October 15, 2004, Inagaki Takashi of JAL wrote to Mohamed Habib of
11 Northwest: "Have you heard that DOT at last decided to permit the filing of FUEL surcharges
12 by carriers!?" Mr. Habib responded, in part, by noting that American Airlines has already
13 undertaken efforts to implement a fuel surcharge. Mr. Habib stated that Northwest would "most
14 likely match" it.

15 211. From November 8, 2004 through November 10, 2004, Mr. Yamasaki engaged in
16 an effort on behalf of JAL to coordinate fuel surcharges with other airlines. Mr. Yamasaki noted
17 that Air France, KLM, Lufthansa, British Airways, Singapore Airlines, Thai Airways, KAL,
18 China Airlines, Qantas, Air New Zealand, American Airlines, UAL, and Northwest, among
19 others, had instituted fuel surcharges. Mamaoru Tsutsumi of JAL concluded in a November 8,
20 2004 e-mail that JAL would help its competitors implement fuel surcharges in Japan and would
21 then follow the lead of these competitors in their home markets.

22 212. Mr. Tsutsumi then referenced the second round of fuel surcharges imposed by the
23 industry that occurred in the fall of 2004 and stated that JAL would implement a fuel surcharge
24 of its own "for Japan departures, after secondary fare increase approval, with an eye on levels in
25 Europe and the Americas, we will file C/S at around JPY 1,000 for short distance and JPY 2,000-
26 2,500 for long distance, and other foreign airlines to follow."

213. On November 10, 2004, Mr. Yamasaki confirmed the following current and future fuel surcharges in the Japanese market (including flights to and from the United States):

Carriers that have implemented fuel surcharges:

British Airways (USD17)

American Airlines (USD25)

Carriers that have not yet implemented fuel surcharges:

SU (Aeroflot) (USD10)

LH (Lufthansa) (USD17)

CX (Cathay Pacific) (USD7)

NW (USD25)

CO (USD25)

214. On November 30, 2004, Hiroko Ueba (Cathay Pacific) e-mailed Yasuhiro Nishiyama (ANA) and Ms. Noma (JAL). The subject matter of the e-mail was “Fuel Surcharge.” Mr. Ueba opened his e-mail by stating that he thanked JAL for their “continued support.” He continued by explaining that ANA wanted to implement a fuel surcharge: “I was wondering if I could obtain an agreement from your company.” The requested agreement concerned flight coupons between Hong Kong and North America, among other places around the world effective December 1, 2004. Ms. Noma obtained the approval of Gen Yamasaki (JAL) through an e-mail dated November 30, 2004. Mr. Yamasaki wrote, “It is okay to agree.” On December 2, 2004, Ms. Noma confirmed to Mr. Yamasaki that “[y]esterday I told CX [Cathay Pacific] that we would agree to it.”

215. On December 26, 2004, Mr. Yamasaki reported in an e-mail to Irie Kesuke of JAL and others that an “airline concordance” was submitted to KE [KAL] today.”

216. On January 5, 2005, Kubota Tomomi of JAL wrote to Mr. Yamasaki of JAL and reported that “TG [Thai Airways] has inquired about a fuel surcharge with a view to obtaining an agreement from us. According to them, it will be USD 20 per leg for international flights. Is it okay to agree?” Mr. Yamasaki replied: “Yes, go ahead and agree.” Mr. Tomomi then stated that

1 he has “confirmed with them as follows Manila International sector: USD 20.00 or
2 equivalent for LAX-bound Kansai departures.”

3 217. On January 7, 2005, Kubota Tomomi of JAL sent an e-mail to Toshiaki Oshima
4 of Singapore Airlines thanking him for his “continuous help” and asking for information about
5 the status of Singapore Airlines’ fuel surcharges. Mr. Tomomi followed up with Mr. Oshima
6 again on January 13, 2005. Kazuhisa Okamoto of Singapore Airlines’ “Alliance dept.” then
7 responded to Mr. Tomomi on January 17, 2005 by explaining the details of Singapore Airlines’
8 fuel surcharges. Mr. Tomomi thanked Mr. Okamoto for the information, promised to be “very
9 carefull [sic] with handling”, and requested that Singapore Airlines “keep cooperating with us in
10 the future.”

11 218. Also, for a period of time commencing in 2004 and for the next several years
12 thereafter, ANA and JAL held regular meetings (which usually took place at ANA’s
13 headquarters in Tokyo) in order to agree on the timing and amount of fuel surcharge increases
14 for flights into and out of Japan, including flights to and from the United States. ANA and JAL
15 also agreed on the exchange rates that would be used to effectuate their agreements and the
16 trigger points for changes in the surcharges. For example, ANA and JAL agreed that a February
17 1, 2005 surcharge described below would terminate when the price of crude oil dropped below
18 \$40/barrel on the Singapore index and that the surcharge into and out of Japan would be \$2,500
19 yen.

20 219. As of December 24, 2005 JAL proposed implementing the surcharge only on
21 outbound flights. On January 5, 2005, ANA proposed a surcharge for both inbound and
22 outbound flights. On January 18, 2005, JAL agreed with ANA’s proposal.

23 220. Participants in the earliest meetings between ANA and JAL included Mr. Shinobe
24 (ANA revenue management); Mr. Kato (ANA revenue management); Mr. Ineda (ANA revenue
25 management); Yugi Saito (JAL international marketing); and Mr. Ishida (JAL revenue
26 management). Beginning in late-November or early December 2004 and continuing thereafter,
27 additional meetings were held between Mr. Yabuki, Mr. Sato, and Mr. Yakoyama from the ANA
28

1 tariff group and Ms. Hoshiko, Ms. Nakano, and Mr. Yamasaki from the JAL tariff group to
 2 facilitate and implement agreements concerning the timing and amount of fuel surcharges on
 3 routes into and out of Japan.

4 221. On May 31, 2005, Hirai Noboru of JAL circulated an e-mail with a subject line
 5 titled: “[r]egarding meeting with NW (**forwarding prohibited read only**).” Mr. Noboru stated
 6 that he was providing a summary of his meeting with NW “yesterday” and that the recipients
 7 should “**delete this after you have finished reading.**” The e-mail noted that Northwest was
 8 considering matching JAL’s application on fuel surcharge increases on routes to Honolulu, but
 9 that Northwest had not yet made a determination about North America “because of reasons such
 10 as the need to watch the trend in other American companies.” This e-mail also referenced fare
 11 coordination between JAL and Northwest, with a final decision to be “made after CO

12 [Continental]/JL [JAL] price coordination.” The e-mail concluded: “The environment is
 13 such that continued price increases will be desired.”

14 222. Collusion on air passenger surcharges continued in Thailand and other countries
 15 as well. For example, on August 18, 2005, Carol Phatoomros of Thai Airways circulated an e-
 16 mail on behalf of “Wallop/VP Sales and Distribution.” The e-mail was titled: “Message from
 17 THAI re Fuel Surcharge.” In the e-mail, Thai Airways stated in part: “[w]e also know that we
 18 have to be aware of market acceptability of these increases. But most of all, we at THAI are
 19 looking for all of your efforts to toe the line with us. All the time we compete absolutely, but
 20 this time we ask for unity and to be onboard the fuel surcharge wagon for our future and
 21 survival.” The e-mail was sent to Singapore Airlines (David Lau), UAL (Eric Wilson), SAS
 22 (Axel Blom), Cathay Pacific (Patrick Yeung), British Airways (Julianne Rogers), Lufthansa
 23 (Wofgang Schmidt), Air India, Air Canada, Eva Airways, KLM (Jhab Sorial), Northwest
 24 (“Sarathool”), Air New Zealand (Panya Silpargam), Asiana, Cathay Pacific (Alan Tang), IATA,
 25 KAL, China Airlines (Charlie Fu), American Airlines (Pajack Burarak, Chaichan
 26 Khorgsrithong), JAL (Chanchai Wangyuenyong), Qantas (L. Moser), Vietnam Airlines, Air

1 France, Swiss International (Brian Sinclair-Thompson), Alitalia, Vietnam Airlines, Philippine
2 Airlines, and ANA, among others.

3 223. On September 1, 2005, a meeting of the Thai BAR was held. It was noted at the
4 meeting that Thai Airways was asking for support for higher fuel surcharges, which would
5 encompass surcharges on flights to and from the United States. The meeting minutes indicated
6 that “[i]t was proposed that BAR should write to TG [Thai Airways] noting that all airlines suffer
7 and in principle accept the higher fuel surcharge, but at the same time have to look at market
8 fares in Thailand which are 20-30% below published [IATA] fares.” The airlines in attendance
9 at the meeting were upset that the “BKK [Suvarnabhumi Bangkok International Airport] fare
10 was below other regional destinations.” Airlines present at this meeting included Thai Airlines
11 (Rangsiman Mokhansasamit), British Airways (Julianne Rogers), Qantas (Julianne Rogers),
12 Cathay Pacific (Patrick Yeung), Northwest (Sarathool), Air France (Christine Seuge), China
13 Airlines (Charlie Fu, Andy Yao), JAL (S. Iwasaki, Chanchai Wangyuengyong), Lufthansa
14 (Wolfgang Schmidt), Korean Air (Suchon Paleewong), ANA (Kimiya Arima, Somnuk Asava),
15 Philippine Airlines (Monet Trespeses), UAL (Eric Wilson), and Vietnam Airlines (Ngayen Nhu
16 Thang), among others. The attendees were urged to support the creation of a subgroup to
17 examine base fare prices and to otherwise discuss each other’s fares.

18 **d. Coordination Of Fuel Surcharge Increases Are Not An Expected By-**
19 **Product Of Competition**

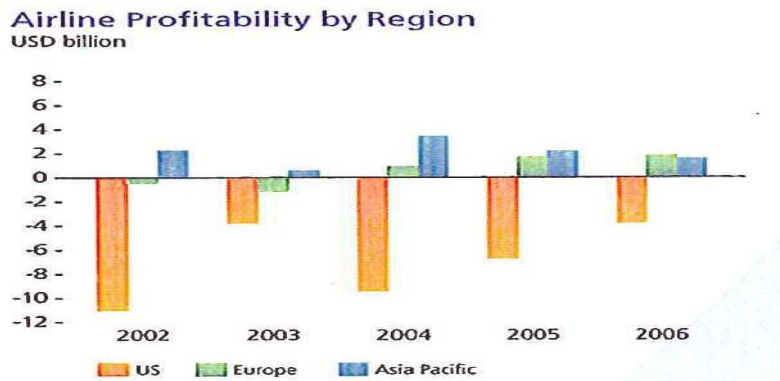
20 224. The coordination of the Defendants’ fuel surcharge increases cannot be explained
21 merely as a function of the industry’s exposure to fuel cost increases. The impact of rising fuel
22 costs on individual airline profits varies widely depending on factors such as fleet utilization and
23 efficiency. Singapore Airlines, for example has newer, more fuel-efficient planes than a number
24 of the Defendants. The impact of rising fuel also varies depending how much of projected fuel
25 consumption was committed to at a fixed price at the beginning of the year, a practice known as
26 hedging. In short, the Defendants’ cost structures differ widely. Their desire to coordinate the
27
28

1 timing and amount of fuel surcharges is not consistent with a competitive air transportation
2 market.

3 **e. Substantial Increases In Profitability Are Not An Expected By-**
4 **Product Of Competition**

5 225. The Defendants and their trade associations encourage a false public perception
6 that the airline industry has been unprofitable in recent years due to increased fuel prices, which
7 have increased substantially during the latter part of the Class Period.

8 226. While it is true that some airlines have been recently unprofitable—mainly U.S.
9 airlines whose profitability problems are only tangentially related to fuel prices—the majority of
10 airlines headquartered in the Asia and Oceania have achieved substantial profits throughout the
11 Class Period, as the following AAPA chart indicates:



20 The 2007 financial report produced by the AAPA notes that carriers in Asia Pacific were
21 collectively recording substantially increased profits even as they were experiencing increased
22 fuel costs:

23 **FY2006/2007 saw a significant improvement in profitability**
24 **for Asia Pacific airlines. Net income tripled, while operating**
25 **profit increased by 69% to USD 3.7 billion. The healthy**
26 **performance was achieved with strong revenue growth, up**
27 **15.4%, outpacing the overall cost increase of 14.1%.**
28 (Emphases added).

1 227. AAPA's 2008 financial report demonstrated that the Asia Pacific carriers
2 recorded historically high profits again for the year ending 2007.

3 Asia Pacific airlines' net income grew by 38% to USD 5.1 billion
4 while operating profit was USD 7.3 billion, up by 87%. AAPA
5 member airline consolidated net income totaled USD 3.9 billion,
up by 12.5% or USD 433 million. **Operating profit surged 68%**
to a record high of USD 6.2 billion.

6 228. Moreover, Defendants' own data demonstrates that the imposition of fuel
7 surcharges was a profit generator for the airlines, not just a cost recovery mechanism.

8 229. For example, ANA reported a net profit of 7.68 billion Japanese yen for the first
9 quarter of fiscal year 2006. Thai Airways collected nearly US\$80 million in fuel surcharges and
10 reported substantial profits in the third quarter of 2006. An August 10, 2006 article in the *China*
11 *Post* quoted a securities analyst as saying that "[t]he higher fuel surcharge in place was also
12 quite effective" in raising Thai Airway's revenues. Similarly, on August 28, 2007, Air New
13 Zealand announced a net profit of NZ\$214 million, up 123% from the previous year. For the
14 same period, Air New Zealand's operating costs increased by 13% while the number of
15 passengers increased only by 4.9%.

16 230. On August 7, 2007, the *Japan Times* reported that JAL's operating loss shrank
17 from 31.9 billion yen the prior year to 8.5 billion yen. The article further stated, "JAL's
18 executive officer, attributed the improved earnings performance to the carrier's efforts to cut
19 costs, brisk business demand for international flights, higher revenue per passenger achieved
20 through fare hikes on domestic routes and increased fuel surcharges on international flights."

21 231. On August 8, 2007, Cathay Pacific announced that its passenger revenue had
22 increased 14.6% for the first half of 2007, compared with the previous year. The total number of
23 passengers increased by only 4.1%, but passenger yield was up 10.9%. The Defendants operate
24 within the confines of a highly-competitive, mature industry. Their ability to substantially affect
25 profitability unilaterally, particularly during a period of turbulent changes in input costs, is not
26 consistent with free and unfettered marketplace competition.

1 **3. Additional Evidence Establishes That There Was A Wide-Ranging Conspiracy**
 2 **To Impose Fuel Surcharges In The Closely Related Cargo Market During the**
 3 **Class Period**

4 232. Defendants engaged in conspiratorial meetings in Asia, Europe, and the Middle
 5 East during and prior to the Class Period in which they reached generalized global agreements to
 6 fix prices that were then implemented regionally and on a route-by-route basis.

7 233. Indeed, in an April 30, 2009 press release from the ACCC, Australian
 8 Competition Authorities alleged that “arrangements or understandings were reached in countries
 9 including Singapore, Indonesia, Hong Kong, United Arab Emirates, India, Japan and Italy.” The
 10 same press release also asserts that Cathay Pacific entered into at least 70 agreements with other
 11 air cargo carriers to fix the price of fuel and other surcharges.

12 234. During the meetings described above, the participants, including the Defendants,
 13 agreed to conceal their price-fixing cartel by staggering the dates on which airlines would
 14 publicly announce that they would match a fare and/or surcharge increase.

15 235. Airline cargo and passenger services are inextricably intertwined markets. The
 16 efficient operation of an airline requires close coordination between its cargo and air passenger
 17 operations. Indeed, much of the cargo that is shipped around the world is carried in the belly of
 18 aircraft that is also used to simultaneously transport people. Accordingly, there is close
 19 interaction between cargo and passenger operations to reserve space, coordinate schedules, and
 20 maximize revenue of each flight.

21 **GOVERNMENT INVESTIGATIONS INTO THE AIR PASSENGER INDUSTRY AND**
 22 **THE CLOSELY RELATED AIR CARGO INDUSTRY**

23 236. The DOJ and competition authorities around the world are investigating
 24 anticompetitive conduct by the airline industry. A criminal grand jury has been empanelled in
 25 the District Court for the District of Columbia to investigate price-fixing of passenger and cargo
 26 air transportation, including related fuel surcharges.

27 237. The investigation into passenger fares and cargo began on or before December 31,
 28 2005, when Lufthansa, on behalf of itself and its subsidiaries, approached the DOJ, the European

1
2 Commission, the ACCC, and other competition authorities with evidence of illegal price-fixing
3 of air cargo rates.

4 238. The DOJ has “a policy of according leniency to corporations reporting their
5 illegal antitrust activity at an early stage, if they meet certain conditions.”

6 239. Based on its report to the DOJ and consistent with and pursuant to the DOJ
7 leniency policy, Lufthansa was accepted into the leniency program.

8 240. Thereafter, Virgin Atlantic sought (and was granted) amnesty from the DOJ and
9 British competition authorities after disclosing its participation in a conspiracy to fix the prices of
10 international passenger fares, including surcharges.

11 241. On August 1, 2007, the DOJ filed a criminal information against KAL in the
12 United States District Court for the District of Columbia, charging it with violating Section 1 of
13 the Sherman Act for engaging in the price fixing of *inter alia*, air passenger fuel surcharges.

14 242. That same day, the DOJ announced that KAL had agreed to plead guilty and pay a
15 \$300 million fine for its participation in the passenger and cargo conspiracy. In confirming that
16 it had agreed to plead guilty, KAL attorney Ahn Yong-Seok announced that the company
17 “apologises to shareholders and customers for causing trouble.” He further stated that KAL’s
18 compliance officer would attempt to ensure future compliance with U.S. and global fair trade
19 rules. Subsequent news reports indicated that Asiana may also be subject to potential fines.

20 243. On August 23, 2007, British Airways pled guilty and was sentenced to pay a \$300
21 million criminal fine for conspiring to fix cargo rates for international air shipments, including to
22 and from the United States, and to fix passenger fuel surcharges for long-haul international air
23 transportation, including between the United States and United Kingdom.

24 244. On November 27, 2007, it was announced that Qantas had agreed to plead guilty
25 to fixing prices for cargo shipments to and from the U.S. and elsewhere, in violation of Section 1
26 of the Sherman Act.

1 245. On November 28, 2007, Qantas' CEO, Geoff Dixon, apologized for his
2 company's behavior and confirmed:

3 Similar investigations to those being carried out by the US
4 Department of Justice (DOJ) are being undertaken by antitrust
5 regulators in other countries, including Australia. We understand
6 more than 30 other airlines are included in these investigations.

7 246. In an April 29, 2009 press release by the DOJ announcing the guilty plea of Frank
8 De Jong of Martinair in connection with the price-fixing of air cargo rates, the DOJ summed up
9 its efforts in this area as follows:

10 The 15 airlines that have pleaded guilty or agreed to plead guilty
11 to date as a result of the Department's ongoing investigation into
12 the air transportation industry are: British Airways Plc, Korean
13 Air Lines Co. Ltd., Qantas Airways Limited, Japan Airlines
14 International Co. Ltd., Martinair, Cathay Pacific Airways Limited,
15 SAS Cargo Group A/S, Société Air France, Koninklijke
16 Luchtvaart Maatschappij N.V. (KLM Royal Dutch Airlines), EL
17 AL Israel Airlines Ltd., LAN Cargo S.A., Aerolinhas Brasileiras
18 S.A., Cargolux Airlines International S.A., Nippon Cargo Airlines
19 Co. Ltd., and Asiana Airlines Inc. Airline executives who have
20 already pleaded guilty for their involvement in the illegal activity
21 are Bruce McCaffrey of Qantas, Timothy Pfeil of SAS and Keith
22 Packer of British Airways.

23 247. On December 22, 2007, ANA announced that it had received a statement of
24 objections from the European Commission regarding ANA's participation in the fixing of prices
25 of air freight. As set forth above, on November 2, 2010, ANA pled guilty to fixing the prices of
26 air freight and of air passenger transportation.

27 248. Other air carriers, including a number of Defendants and their co-conspirators,
28 have also announced that in late-December 2007 they, too, received formal charges from the
European Commission for conspiring to fix cargo rates, including Air New Zealand, Air France,
Lufthansa, Qantas, co-conspirator KAL, Malaysian Airlines, British Airways, Cathay Pacific,
JAL, Thai Airways, and Singapore Airlines, among others. According to Thai Airways, a total
of 26 airlines have received "Statements of Objection" from the European Commission.

1 249. Thai Airways has further disclosed that it is being investigated by competition
2 authorities in Europe, the United States, New Zealand, South Korea, and Australia concerning its
3 participation in anticompetitive conduct involving the global airline industry.

4 250. In their 2007 Annual Reports, China Airlines and EVA acknowledged that the
5 DOJ is investigating price-fixing of cargo rates. Both China Airlines and EVA stated that they
6 were cooperating with the investigation, but were unable to assess their financial exposure at the
7 time the reports were published. On September 10, 2010, China Airlines pled guilty to criminal
8 price-fixing for its role in a conspiracy to fix the rates of shipments of cargo to and from the
9 United States and elsewhere. On May 27, 2011, EVA agreed to plead guilty to criminal price-
10 fixing for its role in a conspiracy to fix the rates of shipments of cargo to and from the United
11 States and elsewhere

12 251. On January 14, 2008, Qantas pled guilty and was sentenced to pay a \$61 million
13 criminal fine for its role in a conspiracy to fix the rates of shipments of cargo to and from the
14 United States and elsewhere.

15 252. News reports indicated that during the week of March 10, 2008, the DOJ ordered
16 a number of Qantas employees to appear in San Francisco for further questioning in the ongoing
17 price-fixing investigations.

18 253. On March 11, 2008, the European Commission raided the offices of Lufthansa
19 (the DOJ's air cargo amnesty candidate), Air France, KLM, and Alitalia for evidence of price-
20 fixing on air passenger tickets for international flights.

21 254. The European Commission confirmed the raids by its personnel:

22 The European Commission can confirm that on 11th March 2008
23 Commission officials carried out unannounced inspections at the
24 premises of a number of international airline passenger carriers.
25 These airline carriers provide scheduled passenger air transport
26 services on long-haul routes between Europe and a third country.
27 The Commission has reason to believe that the companies
28 concerned may have violated EC Treaty rules on restrictive
business practices (Article 81).

1 255. Following the raids, Lufthansa stated that "[a]ccording to information from the
2 investigation decision, the commission has information that passenger aviation companies
3 including Lufthansa in Europe and in Japan may have taken part in anticompetitive price-fixing
4 and collusive behavior in traffic between the EU and Japan."

5 256. On March 12, 2008, the European Commission announced that the Japanese
6 competition authorities also have an investigation underway concerning price-fixing of passenger
7 fares on routes between Japan and Europe.

8 257. On April 16, 2008, the DOJ announced that JAL agreed to plead guilty to fixing
9 the rates for international cargo shipments and to pay a \$110 million fine.

10 258. On April 30, 2008, ANA announced that it had recorded an "extraordinary loss"
11 of \$156 million, which it noted is a preliminary estimate of the fines it is facing from the
12 European Commission for anti-competitive conduct related to the fixing of prices for air freight.
13 ANA noted that "[t]he allegations are based on evidence held by the European Commission and
14 provided to them by other companies."

15 259. On May 8, 2008, the DOJ announced that Bruce McCaffrey, a Qantas executive,
16 agreed to plead guilty to price-fixing cargo fares. He will serve 8 months in federal prison. The
17 announcement explained:

18 McCaffrey is the first individual to be charged, and this is the fifth
19 case to arise, in the wide-ranging investigation into the air
20 transportation industry.

21 260. Also on May 8, 2008, Air Canada disclosed that it, too, had received a statement
22 of objections from the European Commission concerning its participation in a conspiracy to fix
23 air cargo rates. Air Canada also disclosed that it was reserving Cdn. \$125 million to resolve its
24 antitrust problems.

25 261. On June 17, 2008, the *Business Spectator* reported as follows:

26 Qantas Airways has reached a confidential settlement agreement
27 with the Australian Competition and Consumer Commission, in a
28 deal expected to see the airline pay a multi-million dollar penalty
 for its alleged role in illegally fixing fuel surcharges as part of a
 global cartel, reports The Australian Financial Review.

1 According to the paper, the European Commission is also in the
2 final stages of its price-fixing investigations and is ready to take
3 action against 26 airlines.

4 Qantas has signaled to the European regulators that it will admit
5 liability and is expected to pay a hefty fine, the paper said.

6 262. On June 26, 2008, the DOJ announced that it had filed informations against KLM,
7 Air France, Cathay Pacific, and others for fixing cargo rates on international flights to and from
8 the United States. Air France and KLM, which have now merged their operations, have agreed
9 to admit guilt and will pay a \$350 million fine. Cathay Pacific has also agreed to admit guilt and
10 will pay a fine of \$60 million.

11 263. Cathay Pacific's CEO has admitted that Cathay Pacific's actions "were in conflict
12 with US antitrust laws, and we very much regret this."

13 264. On July 18, 2008, the New Zealand Commerce Commission announced that it had
14 filed criminal charges against Singapore Airlines' Cargo Division, Cathay Pacific, and another
15 airline for failing to provide relevant documents and information in response to the
16 Commission's investigation into an international cartel to fix cargo rates, including surcharges.
17 Paula Rebstock, the chairwoman of the New Zealand Commerce Commission stated: "Any
18 failure to comply with . . . statutory notices that form part of a commission investigation is a
19 serious enforcement issue."

20 265. In July of 2008, Air France agreed to plead guilty to fixing cargo fares in the
21 United States. As part of its guilty plea, Air France agreed to a criminal fine of US \$210 million.

22 266. In August of 2008, Timothy Pfeil, the former highest-ranking cargo executive in
23 the United States for SAS, pleaded guilty to conspiring to fix the rates charged to U.S. and
24 international customers on air cargo shipments.

25 267. On September 30, 2008, the DOJ announced that Keith Packer, former
26 Commercial General Manager for British Airways World Cargo, had agreed to plead guilty to
27 fixing air cargo rates charged to customers for international air shipments, including to and from
28 the U.S., in violation of the Sherman Act. Under the plea agreement, which is subject to court

1 approval, Packer has agreed to serve eight months in jail, pay a \$20,000 criminal fine and
2 cooperate with the DOJ's ongoing investigation.

3 268. On October 28, 2008, the ACCC announced that British Airways had agreed to a
4 fine of AU\$5,000,000.00 to resolve price-fixing claims lodged against its cargo division. The
5 ACCC also announced that Qantas had similarly agreed to a fine of AU\$20,000,000.00 for its
6 participation in the cargo conspiracy. The ACCC Chairman, Graeme Samuel stated, "There are
7 some other airlines who are not cooperating with us and we will pursue our investigations there,
8 with a view to bringing them to account as soon as we possibly can. We regard any cartel
9 activity—particularly those that are engaged in by large businesses and are of a price fixing
10 nature—as very serious in terms of consumers, they are nothing more than theft. They steal from
11 consumers potentially millions if not tens of millions of dollars; there's no way that consumers
12 can recover what it has cost them."

13 269. On December 15, 2008, the New Zealand Commerce Commission announced that
14 it had filed an action in the High Court in Auckland against 13 airlines and 10 senior executives,
15 including Air New Zealand, Air France, Cathay Pacific, British Airways, JAL, KAL, Malaysian
16 Airlines, Singapore Airlines, Qantas, Thai Airways, and UAL, for violations of New Zealand's
17 Commerce Act. The New Zealand Commerce Commission also noted that other airlines were
18 cooperating with the investigation. The Commission alleged "that airlines throughout the world
19 colluded to raise the price of freighting cargo by imposing fuel surcharges for more than seven
20 years." The Commerce Commission further noted that the conspiracy "affected the price of
21 cargo both into and out of New Zealand. It is alleged that airlines first entered into an illegal
22 global agreement in 1999/2000 under the auspices of the trade organization International Air
23 Transport Association (IATA). The airlines imposed the fuel surcharges between 2000 and
24 2006. The allegations also involve a series of regional price fixing agreements."

25 270. On December 22, 2008, the ACCC announced that it had instituted proceedings
26 against Singapore Airline's cargo division in Federal Court in Sydney. "The ACCC alleges that
27 Singapore Airlines Cargo Pte Ltd, between 2001 and 2005, entered into arrangements or
28

1 understandings with other international air cargo carriers that had the purpose or effect of fixing
2 the price of a fuel surcharge and a security surcharge that was applied to air cargo carried by
3 Singapore Airlines Cargo Pte Ltd and other airlines including to and from Australia.” The
4 ACCC further noted that a number of additional airlines were not cooperating with its
5 investigation. In a related proceeding, on or about April 3, 2009, Australia’s Federal Court in
6 Melbourne ordered Singapore Airlines and its subsidiary, Singapore Cargo, and Emirates to turn
7 over documents to the ACCC.

8 271. On January 22, 2009, El Al, Aerolinhas Brasileiras, and Lan Cargo agreed to
9 plead guilty to price-fixing air cargo charges.

10 272. On February 16, 2009, a federal court in Australia ordered Air France to pay a
11 AU \$6 million penalty for participating in a conspiracy to fix cargo fuel surcharges.

12 273. On March 31, 2009, Air France agreed to pay a penalty to antitrust authorities in
13 Canada of Cdn. \$4 million.

14 274. On April 9, 2009, Asiana, Nippon Cargo (an affiliate of ANA), and Cargolux
15 agreed to plead guilty to price-fixing air cargo charges in the United States. Asiana also
16 admitted to fixing the price of wholesale and passenger fares and has agreed to pay a \$50 million
17 fine.

18 275. On or about April 20, 2009, the European Commission announced that it has
19 opened a “priority” investigation into certain airline alliance agreements on trans-Atlantic routes.
20 According to Jonathan Todd, a Commission spokesperson, “we think that there may be breaches
21 of the antitrust rules because of the very extensive levels of cooperation on trans-Atlantic routes
22 between these airlines.”

23 276. On April 30, 2009, the ACCC announced that it had filed suit against Cathay
24 Pacific for fixing the prices of fuel and other surcharges. The ACCC noted that it had evidence
25 of at least 70 agreements between Cathay Pacific and its conspirators to fix cargo fares during
26 the period from 2000 to 2006. The ACCC also stated that it is continuing to investigate the
27 airline industry and “further actions are expected over the next few months.”
28

1 277. Also on April 30, 2009, the DOJ announced that a Martinair Holland executive
2 had agreed to plead guilty to fixing air cargo fares, pay a \$20,000 criminal fine and spend 8
3 months in jail.

4 278. On June 26, 2009, the Canadian Competition Bureau announced that Air France,
5 KLM, and Martin Air pled guilty to fixing the price of air cargo shipments during the period
6 from April 2002 to February 2006 and were fined Cdn. \$10 million.

7 279. On July 7, 2009, the Canadian Competition Bureau announced that Qantas had
8 agreed to plead guilty to fixing the price of air cargo shipments during the period from May 2002
9 to February 2006.

10 280. Total fines levied by the DOJ to date in this wide-ranging investigation exceed
11 \$1.6 billion and collectively constitute the largest fines ever imposed by the DOJ as a result of a
12 criminal antitrust investigation. As of April of 2009, fifteen airlines and four executives have
13 admitted (or have agreed to admit) guilt in US courts for their involvement in the worldwide
14 cargo conspiracy. Five airlines have either admitted guilt in fixing the prices of passenger fares
15 or have sought leniency from the DOJ for doing so. The DOJ has stated that its investigation of
16 the industry is continuing. Appendix G summarizes the status of the DOJ investigation with
17 respect to the Defendants named in this complaint.

18 281. It is significant that Defendants' anticompetitive behavior is the subject of a
19 criminal grand jury investigation by the DOJ. In order for the DOJ to institute a grand jury
20 investigation, a DOJ Antitrust Division attorney must believe that a crime has been committed
21 and prepare a detailed memo to that effect. *See Antitrust Grand Jury Practice Manual*, Vol. 1,
22 Ch. I.B.1 (“[i]f a Division attorney believes that a criminal violation of the antitrust laws has
23 occurred, he should prepare a memorandum requesting authority to conduct a grand jury
24 investigation.”). Furthermore, following a review of the memorandum, the request for a grand
25 jury must be approved by the Assistant Attorney General for the Antitrust Division, based on the
26 standard that a criminal violation may have occurred. *See id.* In addition, the fact that the DOJ
27 Antitrust Division investigation is criminal, as opposed to civil, is significant as well. The
28

1 Antitrust Division's "Standards for Determining Whether to Proceed by Civil or Criminal
 2 Investigation" state: "[i]n general, current Division policy is to proceed by criminal investigation
 3 and prosecution in cases involving horizontal, per se unlawful agreements such as price fixing,
 4 bid rigging and horizontal customer and territorial allocations." *See Antitrust Division Manual*,
 5 Chapter III.C.5.

6 **ACCRUAL OF CLAIM, EQUITABLE TOLLING, EQUITABLE ESTOPPEL, AND**
 7 **FRAUDULENT CONCEALMENT**

8 282. Plaintiffs had no knowledge of the combination or conspiracy alleged herein, or
 9 of facts sufficient to place them on inquiry notice of the antitrust claims set forth in this
 10 Complaint, until shortly before the initial class action complaint was filed in this multi-district
 11 litigation.

12 283. Nor could Plaintiffs and the members of the Class have discovered the violations
 13 through the exercise of reasonable diligence earlier than that time because Defendants conducted
 14 their conspiracy in non-public meetings and through confidential emails and telephonic
 15 communications which are detailed extensively above, concealed the nature of their unlawful
 16 conduct and acts in furtherance thereof, and fraudulently concealed their activities through
 17 various other means and methods designed to avoid detection. The conspiracy was by its nature
 18 self-concealing.

19 284. Only on or about August 1, 2007, when the DOJ announced the charges against
 20 KAL for fixing passenger fares and wholesale fares was the existence of the conspiracy disclosed
 21 to the public. That investigation resulted in a criminal guilty plea by ANA in November 2010
 22 for anticompetitive conduct in the passenger transportation services market that commenced "at
 23 least as early as April 2000." As part of the plea deal, the criminal court sitting in Washington
 24 D.C. elected to forego a sentence that included restitution for the victims because of the
 25 pendency of *this litigation*. The Court, in addressing the sentence for ANA, stated:

26 I agree with the government and the defendant in this case and the
 27 circumstances of this case that in light of pending civil action,
 28 restitution should not be ordered here today against ANA after
 considering factors that are relevant under Section 3663 of Title

1 18 and *particularly noting that there is a possible recovery of*
2 *treble damages through that civil action.* I'm going to accept the
3 agreed-upon sentence in this case as it is set out in the plea
agreement and therefore accept the plea with this sentence as
agreed by the government and ANA.

4 285. It is grossly inequitable and unfair to allow an admittedly guilty defendant to
5 avoid fully compensating its victims under the circumstances.

6 286. In fact, there is specific evidence demonstrating that Defendants agreed to conceal
7 their conduct from U.S. regulators and others. For example, illegal price-fixing meetings were
8 held at locations outside of the United States, where they would be difficult to detect by United
9 States antitrust regulators. The meeting minutes of the May 18, 2004 Thai Board of Airline
10 Representatives which reference substantial price-fixing conduct by the Defendants are marked
11 "Confidential" in order to prevent them from being distributed to anyone but the members of the
12 price-fixing conspiracy alleged herein. Further, at the meeting, Thai Board of Airline
13 Representatives, Mr. Suebsantiongse of Thai Airlines, the Board's chairman, specifically
14 reminded the attendees that fuel surcharge discussions were a "sensitive" issue. A reasonable
15 interpretation of Mr. Suebsantiongse's comment was an express or implied warning not to
16 publicly acknowledge the collective efforts of the airlines to impose fuel surcharges, particularly
17 in light of the fact that, as just described, the notes of the meeting were stamped confidential and
18 not to be disseminated to the public. A list of the attendees at the meeting is set forth in
19 Appendix B. The Defendants all understood that coordinated pricing discussions must not be
20 disclosed to the public in order to prevent a backlash from their customers, and this
21 understanding cut across all of the various BAR meetings discussed herein, including September
22 1, 2005 meeting of the Thailand BAR meeting,² the May 21, 2004 meeting of the Philippine
23 BAR, and the May 2004 meeting of the Malaysia BAR.

24 287. Specific price-fixing discussions (referencing names, dates, and subject matter)
25 set forth in the dozens of emails and face-to-face meetings described in Paragraphs 111-79 and
26 206-35 above were conducted in secret and were intended by the participants to never be
27

28 ² A list of attendees of this meeting is set forth in Appendix D.

disclosed to the public. Indeed, the illegal discussions remained secret until one of the conspirators decided to become a whistle-blower and provided this secret material to the Plaintiffs shortly before they filed their amended complaint in August 2009.

288. Some of these intentionally secretive communications included the following non-public emails:

Date	From	To	cc:	Description
1/25/2000	Hidetomi Kadoya (JAL)	Choji Nakamura (JAL)	Shinji Ono (JAL)	Referenced discussions with China Airlines regarding the agreement on ZONE PEX prices to Honolulu and that the two companies were finalizing the specifics on ZONE PEX prices to Honolulu after agreeing in principle to coordinate ZONE PEX pricing.
8/19/2000	Eugene Yi-Ching Lee (China Airlines)	Shinji Ono (JAL)	China Airlines Employees	Recent 20 page facsimile with China Airlines' ZONE PEX, APEX and other carrier fares from Japan to Taiwan, S.E. Asia and Honolulu for the period from 10/1/00 to 3/31/01. Asks JAL to review and concur with China Airlines' prices.
8/20/2000	Tsuneo Kojima (Thai Airways)	Keeratiroj Sirisap (Thai Airways); Shinji Ono (JAL); Fukushima (ANA)		Thai Airways to send to ANA and JAL its fares and rules of application for the period between 10/1/00 and 3/31/01 on certain flights from Tokyo and Osaka to the US. Request concurrence. Attachment: ZPEX fares for LAX, SFO, LAS, SEA, PDX, SAN, and OAK.
10/24/2000	Shinji Ono (JAL)	Eugene Yi-Ching Lee (China Airlines)		Indicated review of documents and concur with ZPEX/APEX/Carrier IIT fares, except for APEX fares from Tokoname in Japan to Kaohsiung in Taiwan. Ono also asked for the Tokoname - Kaohsiung route, that China Airlines agree to the fare set by EG (Japan Asia Airways) on that route. "[i]f you will agree with the above

Date	From	To	cc:	Description
				matching, EG will concur..."
2/13/2001	Tsuneo Kojima (Thai Airways)	Keeratiroj Sirisap (Thai Airways)	Shinji Ono (JAL); Akiko Oyama (ANA)	Regarding concurrence on ZONE PEX fares to the US for the first half of FY2001. Attachment: Proposed ZONE PEX fares for Japan to US and the rules of application about the ZONE PEX fare.
7/25/2001	Tsuneo Kojima (Thai Airways)	Keeratiroj Sirisap (Thai Airways)	Shinji Ono (JAL); A. Kawaguchi (ANA)	Regarding ZONE PEX fares for second half of FY2001. Attachment: Fare Sheet.
7/25/2001	Tsuneo Kojima (Thai Airways)	Keeratiroj Sirisap (Thai Airways)	Shinji Ono (JAL); Akiko Kawaguchi (ANA)	"[w]e have now completed the fares for TG [Thai Airways] Zone Pex from Japan to US for 10/1/01 through 3/2/11. Applicable rules remain unchanged. We would like to request you to receive concurrence from JL/NH on our proposal as soon as possible." Attachment: Fare sheet
7/26/2001	Keeratiroj Sirisap (Thai Airways)	Shinji Ono (JAL); Yasuhiro Nishiyama (ANA)	Tsuneo Kojima (Thai Airways); Seree Pipatchaipoom (Thai Airways)	Asking for concurrence as to the flights on various city pairs, including flights between Japan and the US.
7/27/2001 (In email string 10/24/02)	Katsutaka Fujii (China Airlines)	Shinji Ono (JAL)		Indicated, "[w]e have received the fares for Hong Kong and Honolulu. Are they final fares? If they are final, we will match and send them to the head office."
7/30/2001	Katsutaka Fujii (China Airlines)	Mei-Wen Lin (China Airlines)	Shinji Ono (JAL); Yoshihisa Yamamoto (China Airlines); Masaru Kunihiro (China	Notifying JAL employees of China Airlines' intention to match JAL's ZONE PEX and APEX fares from Hong Kong to Honolulu for the second half of FY2001. Attachment: Fare sheet with pricing for the referenced fares.

Date	From	To	cc:	Description
			Airlines)	
8/2/2001	Katsutaka Fujii (China Airlines)	Shinji Ono (JAL); Choji Nakamura (JAL); Mei-Wen Lin (China Airlines); Tsugio Arasaki (China Airlines); Kengo Tanaka (China Airlines); Yoshihisa Yamamoto (China Airlines); Masaru Kunihiro (China Airlines)		Informing JAL that China Airlines was going to match JAL's ZONE PEX and APEX fares between Tokyo and various destinations including Honolulu. Identified matching fares between various city pairs, including flights between Asia and Honolulu.
8/7/2001	Mei-Wen Lin (China Airlines)	Shinji Ono (JAL)	Katsutaka Fuji (China Airlines); Choji Nakamura (JAL); Masaru Kunihiro (China Airlines); Yoshihisa Yamamoto (China Airlines); Tsugio Arasaki (China Airlines);	Requesting coordination with JAL on various city pair routes, including the coordination of ZONE PEX and APEX fares between Tokyo and Honolulu.

Date	From	To	cc:	Description
			Kengo Tanaka (China Airlines)	
10/31/2001	Katsutaka Fujii (China Airlines)	Choji Nakamura (JAL); Shinji Ono (JAL)	Mei Wen Lin (China Airlines); Masaru Kunihiro (China Airlines); Junichi Kimura (China Airlines)	Stated proposed Special APEX fares to Honolulu, adding "[W]e will inform you if there is any changes, but we match fare rule with JL."
1/24/2002	Katsutaka Fujii (China Airlines)	Mei Wen Lin (China Airlines)	Ta Kung Lee (China Airlines); Yeh Cheng Fan (China Airlines); Yoshihisa Yamamoto (China Airlines); Kengo Tanaka (China Airlines); Masaru Kunihiro (China Airlines); Tsugio Arasaki (China Airlines); Shinji Ono (JAL); Choji Nakamura (JAL)	

Date	From	To	cc:	Description
1/29/2002	Tsuneo Kojima (Thai Airways)	Keeratiroj Sirisap (Thai Airways); Shinji Ono (JAL); Akiko Kawaguchi (ANA); Hajime Kuroiwa (Thai Airways)		Proposed ZONE PEX fares between Narita/Kansai to Los Angeles for the period between 4/1/02 and 9/30/02. Indicated that Thai Airways would like to have concurrence from [JAL/ANA] as early as possible.
2/18/2002	Mei-Wen Lin (China Airlines)	Shinji Ono (JAL); Katsutaka Fujii (China Airlines); Masaru Kunihiro (China Airlines); Kengo Tanaka (China Airlines); Yoshihisa Yamamoto (China Airlines); Tsugio (China Airlines); Kenji Doi (China Airlines)		Requesting concurrence on ZONE PEX and APEX fares from Tokyo to Honolulu for the first half of FY2002. Last line of email states "HNL ROUTE (MATCHING WITH JL) TYO-HNL ZPEX/APEX"
7/29/2002	Kenji Doi (China Airlines)	Shinji Ono (JAL)		Stating, "As to the HNL route and the South East Asia route,... we will match JAL naturally but we have no information [about it]."
8/5/2002	Tsuneo Kojima (Thai Airways)	Akiko Oyama (ANA); Shinji Ono (JAL)	Shingo Komatsu (Thai Airways); Hajime Kuriowa (Thai	Requesting concurrence on ZONE PEX fares on flights to the US for the second half of FY2002.

Date	From	To	cc:	Description
			Airways)	
8/9/2002	Tsuneo Kojima (Thai Airways)	Keeratiroj Sirisap (Thai Airways); Shingo Komatsu (Thai Airways); Hajime Kuroiwa (Thai Airways)	Shinji Ono (JAL); Akiko Oyama (ANA)	Confirmed that an agreement had been reached between the 3 airlines regarding carrier fares from Japan to the US
8/9/2002	Takashi Oshima (Singapore Airlines)	Shinji Ono (JAL)		Singapore Airlines coordinated carrier fares on flights to the US – “[f]or Los Angeles and Las Vegas fares, we have matched your fares...”
8/16/2002	Mei-Wen Lin (China Airlines)	Shinji Ono (JAL)	Masaru Kunihiro (China Airlines); Kenji Doi (China Airlines)	Requesting concurrence of ZONE PEX, 14 day APEX and 35 day APEX fares from Tokyo to Honolulu for the second half of FY2002. Stated, “TYO to HNL - ZPEX/APEX14/APEX35.”
10/24/2002	Shinji Ono (JAL)	Keeratiroj Sirisap (Thai Airways); Tsuneo Kojima (Thai Airways)		Response to Thai Airways’ ZONE PEX fares from Japan to the US proposed on 7/26/01, indicating “we have no objection.” Also discussed the fact that JAL intended to seek agreement with Philippine Airlines regarding coordinated fares to Manila and also indicated a willingness to coordinate with Thai Airways on carrier fares to Thailand.
10/24/2002	Shinji Ono (JAL)	Mei-Wen Lin (China Airlines); Masaru Kunihiro (China Airlines); Kenji Doi		JAL explaining it had “no obligation for the captioned fares” between Tokyo and Honolulu proposed by China Airlines.

Date	From	To	cc:	Description
		(China Airlines)		
2/19/2003	Takashi Oshima (Singapore Airlines)	Shinji Ono (JAL)		Asking for concurrence on APEX fares from Tokyo to Los Angeles
5/24/2004	Carol Phatoomros (Thai Airways)	Thai BAR meeting participants and others, including Prajak Burarak and Chaichan Khongsrithong (American Airlines), and EVA Airways		Follow-up after Thai BAR meeting. Attachment: Letter that Thai Airlines was sending to the Thai Department of Transport. Letter stated in part that "the members of the Board of Airlines Representatives at a meeting on May 18th agreed that unless otherwise instructed by their Head Offices... they would apply fuel surcharges adapting the fuel price index methodology of calculating the surcharge... US\$15.00 for intercontinental flights. The fuel surcharge will be on a per sector basis..." These Surcharges included surcharges on flights to and from the US.
5/25/2004	Estrellita O. Inoturan (PAL)	JAL employee		Discussing the intended surcharge, the effective date, and the method of implementation. Request confirmation that the recipients would agree to it.
5/26/2004	Terada Haruhiko (JAL)	Ito Satoshi (JSA Tyopiz); Uyama Hiroshi (JSA Tyopiz); Nakano Hoshiko (JSA Tyopiz)		Indicated that "[w]e do not oppose PR's [Philippine Airlines] adoption of the fuel surcharge."
6/7/2004	Suthep Suebsantiwongse (Thai Airways)	Annie Tsim (Austrian Airlines); Buranut Limjitti		Confirming the impositions of fuel surcharges as previously discussed by Thailand BAR members.

Date	From	To	cc:	Description
		(AUA); Merita (Kenya Air); Raymond Honings (Asia); Royal Runei; ANA; Markus Moschner (Asia)		
6/15/2004	Akira Mori (JAL)	Tran Thu Hien (Vietnam Airlines)		Response to inquiry regarding ANA's fuel surcharge intentions. JAL was planning on implementing Vietnam Airlines' "captioned surcharge from July 1, 2004" and that ANA "will most likely match us."
6/22/2004	Nakano Hoshiko (JAL)	Onuki Tetsuya (JSA TYPOCGZ)		Noted that "[w]e have a sensitive relationship with the authority and we do not want to have any arguments about the set-up of carrier fares, etc."
7/13/2004	Si Yeon Lee (KAL)	Takashi Inagaki (JAL)		Providing proposed APEX fares from Tokyo to Los Angeles for the first half of FY2004 and requesting concurrence. Attachment: Agreement upon ZONE PEX prices between Tokyo and Los Angeles
7/21/2004	Tomomi Kubota (JAL)	Si Yeon Lee (KAL)		Indicating JAL's agreement with KAL's proposed coordinated price.
9/1/2004	ANA Rep	JAL Reps		Fare chart for ANA's discount class fares for the forthcoming 6- month period.
9/21/2004	Gen Yamasaki (JAL)	Mohamed Habib (Northwest)		Asking why the DOT was reluctant to authorize fuel surcharges for passenger tickets. Habib response inquired as to possible interest within JAL to implement fuel surcharges.

Date	From	To	cc:	Description
10/15/2004	Inagaki Takashi (JAL)	Mohamed Habib (Northwest)		Asking, "Have you heard that DOT at last decided to permit the filing of FUEL surcharges by carriers!!?" Habib responded by noting that American Airlines has already undertaken efforts to implement a fuel surcharge and that Northwest would "most likely match" it.
10/29/2004	Hirashi Rie (JAL)	Gen Yamasaki (JAL)		Confirming that Air France would begin collection of a 10 Euro fuel surcharge on international flights.
10/29/2004	Hirashi Rie (JAL)	Gen Yamasaki (JAL)		Confirmed that Lufthansa had increased its fuel surcharge for international carriage from 7 Euros to 17 Euros and that British Airways had increased its fuel surcharge from 6 Pounds to 10 Pounds.
10/29/2004	Liu Zheng (JAL)	Gen Yamasaki (JAL)		Confirming that China Airlines will start collection of fuel surcharge for the "China-America" route of US\$14.00 and that KAL had started imposing a fuel surcharge of US\$25.00 for departures from the US on October 25, 2004. Also, noted that Qantas had increased its fuel surcharge for the "America routes" to US\$21.30, effective October 20, 2004.
11/1/2004	Noma Kaori (JAL)	Gen Yamasaki (JAL)		Confirming communication with American Airlines, UAL, Delta, Continental, and Northwest and that these airlines had imposed fuel surcharges of US\$25.00 on transpacific routes, except to/from Japan, where the fuel surcharge was US\$5.00. With the exception of Northwest, these surcharges were not expressly described as "fuel surcharges." Also, noted that Philippine Airlines was also imposing a US\$25.00 fuel surcharge, effective for tickets issued on and after October 22,

Date	From	To	cc:	Description
				2004, and that Thai Airways was introducing a fuel surcharge of US\$19.00, effective November 1, 2004, for routes to and from the US. Also confirmed through ATPCO, a tariff publication company owned by Air France, American Airlines, British Airways, Continental, JAL, Delta, KLM, Lufthansa, Northwest, Swiss International, UAL, and others, that Thai Airways was implementing a fuel surcharge of US\$15.00 one way to and from the US, and that Singapore Airlines was collecting a US\$17.00 fuel surcharge to/from the US.
11/4/2004	JAL			Described the assistance that JAL would provide other airlines concerning pricing for “arrivals from Europe, the Americas and Asia.” For overseas hubs of other carriers, JAL said it would “follow” the lead of other carriers.
11/8/2004	Gen Yamasaki (JAL)	Mamaoru Tsutsumi (JAL)	Yamada Tomoaki (JAL); Hakoda Hideki (JAL); Fukada Yasuhiro (JAL); Fujioka Hidekazu (JAL); Fukada Makoto (JAL); Tanabe Harukata (JAL); Yamaguchi EichI (JAL); Onuki	Indicated that JAL would help its competitors implement fuel surcharges in Japan and would then follow the lead of these competitors in their home markets.

Date	From	To	cc:	Description
			Tetsuya (JAL); Hayakawa Shinji (JAL); Takahashi Tetsuo (JSA); Saito Yuji (JSA); Mizuno Toru (JAL); Fujita Tadashi (JSA); Amakawaya Shigeru (JSA); Ando Tsutomu (JAL)	
11/10/2004	Gen Yamasaki (JAL)	Mamaoru Tsutsumi (JAL)	Yamada Tomoaki (JAL); Hakoda Hideki (JAL); Fukada Yasuhiro (JAL); Fujioka Hidekazu (JAL); Fukada Makoto (JAL); Tanabe Harukata (JAL); Yamaguchi Eichi (JAL); Onuki Tetsuya (JAL); Hayakawa Shinji (JAL); Takahashi Tetsuo (JSA); Saito Yuji (JSA); Mizuno Toru	Confirmed current and future fuel surcharges in the Japanese market (including flights to and from the US)

Date	From	To	cc:	Description
			(JAL); Fujita Tadashi (JSA); Amakawaya Shigeru (JSA); Ando Tsutomu (JAL)	
11/30/2004	Hiroko Ueba (Cathay Pacific)	Yasuhiro Nishiyama (ANA); and Ms. Noma (JAL)		Thanking JAL for their “continued support.” Also explained that ANA wanted to implement a fuel surcharge and sought agreement. The requested agreement concerned flight coupons between Hong Kong and North America, among other places around the world effective December 1, 2004.
11/30/2004	Noma Kaori (JAL)	Gen Yamasaki (JAL)		Obtained the approval of Gen Yamasaki (JAL)
12/2/2004	Noma Kaori (JAL)	Gen Yamasaki (JAL)		”yesterday I told CX [Cathay Pacific] that we would agree to it.”
12/26/2004	Gen Yamasaki (JAL)	Irie Kesuke (JAL)		Reported that an “airline concordance was submitted to KE [KAL] today.”
1/5/2005	Kubota Tomomi (JAL)	Gen Yamasaki (JAL)		Reported that Thai Airways sought agreement on a fuel surcharge to be USD 20 per leg for international flights. “Is it okay to agree” - Mr. Yamasaki replied “Yes, go ahead and agree,” and stated that he has “confirmed with them as follows... Manila International sector USD 20.00 or equivalent

Date	From	To	cc:	Description
				for LAX-bound Kansai departures.”
1/7/2005	Kubota Tomomi (JAL)	Toshiaki Oshima (Singapore Airlines)		Thanking him for “continuous help” and asking for information about the status of Singapore Airlines’ fuel surcharges.
1/17/2005	Kazuhisa Okamoto (Singapore Airlines)	Kubota Tomomi (JAL)		Explaining the details of Singapore Airlines’ fuel surcharges.
5/31/2005	Hirai Noboru (JAL)	Mitaki Kenya (JSA); Mizuguchi (JSA); Terao Yasushi (JSA)	Kuryu Ichiro (JSA); Amakawaya Shigeru (JAL); Ninomiya Hideo (JAL); Koyama Yuji (JAL); Hayakawa Shinji (JAL); Saito Yuji (JAL); Nakada Atsushi (JSA)	Referenced 5/30/05 meeting between Northwest and JAL. Email discussed pricing for fares to Honolulu and Micronesia for the second half of FY2005. For flights from Osaka to Honolulu, Hirai wrote that he would “seek to coordinate and consider with branch offices for plus 5000 yen.” For flights from Tokyo to Honolulu, Hirai wrote that he would “seek coordination within range from about the same as last year to about plus 2000 yen.” For fares from Tokyo to Micronesia, Hirai wrote, “decision will be made after CO/JAL price coordination. Desire price increase of about 5%... APEX would continue.”
5/31/2005	Hirai Noboru (JAL)	Mitaki Kenya (JSA); Mizuguchi (JSA); Terao Yasushi (JSA)	Kuryu Ichiro (JSA); Amakawaya Shigeru (JAL); Ninomiya Hideo (JAL); Koyama Yuji (JAL); Hayakawa Shinji (JAL); Saito Yuji (JAL); Nakada	Subject line: “Regarding meeting with NW (forwarding prohibited read only)” - Providing a summary of his meeting with NW and informing recipients to “delete this after you have finished reading.” Noted that Northwest was considering matching JAL’s application on fuel surcharge increases on routes to Honolulu, but that Northwest had not yet made a determination about North America “because of reasons such as the need to watch

Date	From	To	cc:	Description
			Atsushi (JSA)	the trend in other American companies.” Also referenced fare coordination between JAL and Northwest, with a final decision to be “made after CO [Continental]/JL [JAL] price coordination.” Ending with, “The environment is such that continued price increases will be desired.”
8/18/2005	Carol Phatoomros (Thai Airways)	David Lau (Singapore Airlines); Eric Wilson (UAL); Axel Blom (SAS); Patrick Yeung (Cathay Pacific); Julianne Rogers (British Airways); Wofgang Schmidt (Lufthansa); Air India; Air Canada; Eva Airways; Jhab Sorial (KLM); Sarathool (Northwest); ; Panya Silpargam (Air New Zealand); Asiana; Alan Tang (Cathay Pacific); IATA; KAL;		Subject line: “Message from THAI re Fuel Surcharge” - stated “[w]e also know that we have to be aware of market acceptability of these increases... we at THAI are looking for all of your efforts to toe the line with us. All the time we compete absolutely, but this time we ask for unity and to be onboard the fuel surcharge wagon for our future and survival.”

Date	From	To	cc:	Description
		Charlie Fu (China Airlines); Pajack Burarak (American Airlines); Chaichan Khorgsritho ng (American Airlines); Chanchai Wangyueny ong (JAL); L. Moser (Qantas); Vietnam Airlines; Air France; Brian Sinclair- Thompson (Swiss Internationa l); Alitalia; Philippine Airlines; ANA		
10/31/2005	Siyeon Lee (KAL)	Takashi Inagaki (JAL)		“[w]e are matching NW's [Northwest] level.”
10/31/2005	Takashi Inagaki (JAL)	Tanaka Misato (JAL)		Discussed KAL’s proposed coordinated fares for flights from Japan to the US and described JAL’s relationship with KAL as one premised on a “gentlemen's agreement.” Also noted that Northwest was matching fares.
11/1/2005	Takashi Inagaki (JAL)	Inagaki Takashi (JAL)		Indicated KAL always agreed to match JAL's fares pursuant to a “gentlemen's agreement” - reference to fares from Tokyo to Los Angeles.

Date	From	To	cc:	Description
7/7/2006	Ai Watanabe (China Airlines)	Owano Hideo (JAL)	Kenji Doi (China Airlines)	Explaining that China Airlines hoped to establish an APEX fare between Tokyo and Honolulu soon. Requested concurrence from JAL as soon as JAL's routes became available. Want to know when JAL's second half FY2006 fare proposal to Honolulu.

289. Other examples of concealment include, for example, the following: On June 15, 2004, Akira Mori (JAL) responded to an inquiry from Vietnam Airlines (Tran Thu Hien) regarding ANA's fuel surcharge intentions. Mr. Mori stated that JAL was planning on implementing Vietnam Airlines' "captioned surcharge from July 1, 2004" and that ANA "will most likely match us." A subsequent JAL e-mail from Nakano Hoshiko dated June 22, 2004 noted that "[w]e have a sensitive relationship with the authority and we do not want to have any arguments about the set-up of carrier fares etc." A reasonable interpretation of Mr. Hoshiko's comment is that the participants in these price-fixing discussions needed to conceal their collective rate-setting efforts in order to avoid scrutiny by the regulatory authorities.

290. In fact, JAL and ANA specifically agreed during the conspiracy period to submit separate fare and fuel surcharge applications to the Japanese regulatory authority and to avoid referencing the existence of agreements by one or the other to "match" each other's pricing policies. Indeed, when a pricing change was desired by JAL and ANA, one or the other of the carriers would generally submit an application with the Japanese regulator first and the other carrier would follow with a matching application a few days later. The staggered nature of these submissions served to conceal pre-existing price-fixing agreements. The first fuel surcharge increase between Japan and the U.S. provides an example of how this process occurred.

291. In October 2004, JAL marketing department employee Yuji Saito initiated contact with his counterpart at ANA to discuss the implementation of fuel surcharges into and out of Japan. ANA Revenue Management Employee Mr. Ishida said ANA would not be applying a surcharge. Nevertheless, JAL continued to seek ANA's support for a fuel surcharge and a

1 further meeting was held in November of 2004 to discuss its implementation. This meeting was
2 attended by: Saito, Shinobe (ANA Revenue Management), Kato (ANA Revenue Management,
3 and Inida (Management Planning). Following this, a series of meetings were held in November
4 and December 2004, usually at JAL's Tokyo headquarters where discussions were held
5 concerning the amount and structure of the fuel surcharges. The two companies coordinated: (1)
6 amounts and (2) when the surcharge would sunset. It was agreed that the surcharges would
7 terminate if the price of crude oil dropped below \$40/barrel on the Singapore index. JAL
8 employees involved in these meetings included: (1) Ms. Hoshiko and International Marketing
9 Department employee and head of JAL tariff group; (2) Ms. Nakano; and (3) Gen Yamasaki
10 (Nakano's No. 2). The ANA tariff group representatives were: Messrs Yabuki, Sato, and
11 Yakoyama. The participants in this scheme agreed that fuel surcharge requests should not be
12 filed simultaneously.

13 292. On December 24, 2004, JAL submitted its surcharge request to the Japanese
14 regulator. The initial surcharge of 2,500 yen would take effect on January 20, 2005 but would
15 only apply to outbound flights.

16 293. On January 5, 2005, ANA submitted its surcharge request to the Japanese
17 regulator for 2,500 yen set to take effect on February 1, 2005 for both outbound and inbound
18 flights.

19 294. On January 7, 2005, Kubota Tomomi of JAL sent an e-mail to Toshiaki Oshima
20 of Singapore Airlines thanking him for his "continuous help" and asking for information about
21 the status of Singapore Airlines' fuel surcharges. Mr. Tomomi followed up with Mr. Oshima
22 again on January 13, 2005.

23 295. On January 16, 2005, Gen Yamasaki of JAL warned members of his staff to
24 please "be careful" with the fuel surcharge information of JAL and other carriers.

25 296. Kazuhisa Okamoto of Singapore Airlines' "Alliance dept." then responded to Mr.
26 Tomomi on January 17, 2005 by explaining the details of Singapore Airlines' fuel surcharges.
27 Mr. Tomomi thanked Mr. Okamoto for the information, promised to be "very carefull [sic] with
28

1 handling”—meaning that he would not disclose this non-public information to individuals
 2 outside the conspiracy—and requested that Singapore Airlines “keep cooperating with us in the
 3 future.”

4 297. On February 18, 2005 JAL amended its surcharge so that it would apply to both
 5 inbound and outbound flights.

6 298. On May 31, 2005, Hirai Noboru of JAL circulated an e-mail with a subject line
 7 titled: “[r]egarding meeting with NW (**forwarding prohibited read only**)” to the following JAL
 8 employees: Mitaki Kenya (JSA TYOSMA); Mizuguchi Yusuke (JSA TYOSMA); Terao Yasushi
 9 (JSA OSASIG); Kuryu Ichiro (JSA TYOSMA); Amakawayama Shigeru (JALI TYOCIZ);
 10 Ninomiya Hideo (JALI TYOCIZ); Koyama Yuji (JALI TYOCIZ); Hayakawa Shinji (JALI
 11 TYOCGZ); Saito Yuji (JALI TYOCIZ); Nakada Atsuh (JSA OSASIG).

12 299. Mr. Noboru stated that he was providing a summary of his meeting with NW
 13 “yesterday” and that the recipients should “**delete this after you have finished reading.**”
 14 (emphasis in original). The e-mail noted that Northwest was considering matching JAL’s
 15 application on fuel surcharge increases on routes to Honolulu, but that Northwest had not yet
 16 made a determination about North America “because of reasons such as the need to watch the
 17 trend in other American companies.” This e-mail also referenced fare coordination between JAL
 18 and Northwest, with a final decision to be “made after CO [Continental]/JL [JAL] price
 19 coordination.” The e-mail concluded: “The environment is such that continued price increases
 20 will be desired.”

21 300. On December 28, 2005, Irie Keisuke (JAL) sent an email to numerous JAL
 22 employees, including Morioka Kiyoto, Cahill Fusako, Fujioka Hidekazu, Anan Masaaki, Lucas
 23 Mark, Nishijima Mahahiro, Tsuda Naoto, Ito Satoshi, Nishiwaki Jun, Shibata Akinobu, Furuta
 24 Shur, Kuwahara Yukiko, Inagaki Takashi, Yamasaki Gen, Nakano Hoshiko, Tanaka Misa,
 25 Hayashirie, Saito Yuji, Yasumitsu Shinsaku, Iwahi Koso, Koyama Yuji, Asahi Atsuko,
 26 Hatakeyama Takahisa, Fukuda Yutaka, Hayakawa Shinji, Omori Yasushi. The email’s subject
 27 was: “[**HIGHLY CONFIDENTIAL- DO NOT FORWARD**] Increase in fuel surcharge for
 28

1 flights departing from and **arriving in Japan.**” The email continued: “With regard to the
 2 captioned matter, as fuel costs are trending at a higher level than expected with the present fuel
 3 surcharge, we will file an application to increase the fuel surcharge for [flights] departing from
 4 and arriving in Japan. . . . This is in the middle of the period, and we have not obtained the
 5 agreement of the other airlines, so for the present time I am asking each of the branches to wait
 6 for instructions until after the New Year with regard to information disclosure.” As set forth in
 7 the following chart, agreement was reached between ANA and JAL and announcements of fuel
 8 surcharges were made by JAL (Jan. 16, 2006) and ANA (Jan. 23, 2006).

9 301. ANA and JAL’s public announcements concerning changes to fuel surcharge
 10 pricing further served to conceal the existence of price-fixing agreements between the
 11 competitors from the public. For example, the companies would stagger the timing of their
 12 announcements and the effective dates of the price changes in order to make it appear that one
 13 competitor was following the lead of the other, rather than entering into pre-existing, coordinated
 14 agreements to fix-prices:

15 <u>January 5, 2005.</u> ANA announced it 16 would add fuel surcharges on 17 international fares on February 1 . The surcharges for transpacific flights were 2,500 yen (approximately US \$24.37)	<u>January 20, 2005.</u> JAL announced it would add fuel surcharges on international passenger fares on February 1 . The surcharges for transpacific flights were 2,500 yen (approximately US \$24.37).
18 <u>June 3, 2005.</u> JAL announced its 19 intention to raise its international fuel surcharge effective July 1 .	<u>June 7, 2005.</u> ANA announced its intention to raise its international fuel surcharge effective July 7 .
20 <u>January 16, 2006.</u> JAL announced its 21 intention to raise its international fuel charge effective March 1 .	<u>January 23, 2006.</u> ANA announced its intention to raise its international fuel surcharge, effective March 1 .
22 <u>August 17, 2006.</u> JAL announced its 23 intention to raise its international fuel surcharge, effective October 1 , from 24 8,000 yen to 13,600 yen (\$66 to \$113).	<u>August 31, 2006.</u> ANA announced its intention to raise its international fuel surcharge, effective October 15 , from 8,000 yen to 13,600 yen (\$66 to \$113).
25 <u>November 16, 2006.</u> JAL announced its 26 intention to reduce the fuel surcharge on international passenger fares effective 27 January 1 , lowering the surcharge from 13,600 yen to 13,000 yen (\$113 to 28 \$108).	<u>November 16, 2006.</u> ANA announced its intention to reduce the fuel surcharge in international passenger fares effective January 1 , lowering the surcharge from 13,600 yen to 13,000 yen (\$113 to \$108).

1 2 3 4 5 6 7 8 9	<u>March 19, 2007.</u> JAL announced its intention to reduce the fuel surcharge on international passenger fares effective May 1 , to 11,000 yen (\$91).	<u>March 20, 2007.</u> ANA announced its intention to reduce the fuel surcharge on international passenger fares effective May 1 , to 11,000 yen (\$91).
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<u>May 15, 2007.</u> JAL announced its intention to raise the fuel surcharge on international passenger fares effective July 1 , from 11,000 yen or \$91 to 12,000 yen (\$100).	<u>May 25, 2007.</u> ANA announced its intention to raise the fuel surcharge on international passenger fares effective July 10 , from 11,000 yen or \$91 to 12,000 yen (\$100).
	<u>August 15, 2007.</u> JAL announced its intention to raise the fuel surcharge on international passenger fares effective October 1 , from 12,000 yen or \$100 to 13,000 yen (\$108).	<u>August 20, 2007.</u> ANA announced its intention to raise the fuel surcharge on international passenger fares effective October 1 , from 12,000 yen or \$100 to 13,000 yen (\$108).

302. Moreover, the Defendants made false statements to the public and to others, including the issuance of false and misleading press releases claiming that fuel surcharges were required to offset the rising cost of fuel to further conceal the true reason for the imposition of fuel surcharges, when in reality, the fuel surcharges were the product of coordinated actions by the Defendants and became a profit center for them. In making these announcements, Defendants never mentioned that the true reason for the fuel surcharges was the secret agreement that their competitors would also increase fuel surcharges. If there had been no secret agreement, competition would have precluded imposition of the surcharges. There is an obligation in the law that requires one who speaks on a subject to speak truthfully and completely. It is misleading to suppress a fact when giving information of other facts which are likely to mislead for want of communication of that fact. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud. In addition, a party is responsible for a representation that was not made directly to a plaintiff if the representation is made to someone else intending or reasonably expecting that it would be repeated to the plaintiff. Defendants may have been entitled to justify the fuel surcharges by reference to increased fuel costs had they also explained that they and their competitors had agreed to increase prices collusively. By divulging part of the story, the Defendants were obligated to explain the whole

1 story. The failure to do so was false and misleading. Specific examples of fuel surcharge
2 announcements include:

3 303. On May 12, 2004, the *PNG Post-Courier* published an article entitled “Qantas,
4 BA slugs surcharge on ticket to meet fuel costs.” The article stated that the fuel surcharges were
5 being imposed “because of soaring oil prices” caused, according to Qantas chief executive Geoff
6 Dixon, by “continuing tensions in the Middle East and strong global demand, particularly from
7 the US and China.” Articles containing the same information about Qantas’ fuel surcharge were
8 published that same day in *The Age*, *Dow Jones Factiva*, and *Travelpress*. Defendant did not
9 disclose that collusion was the true reason for fuel surcharge increases.

10 304. On May 14, 2004, an article was published in *Dow Jones Factiva* and *Reuters*
11 entitled “SAS hikes fares to compensate for high fuel costs.” The article stated “Scandinavian
12 airline SAS joined European rivals on Friday in raising air fares to compensate for sky-high fuel
13 prices. ‘As a result of the recent extremely high prices for aviation fuel, the SAS group is
14 adjusting its fares in line with other European and American airlines,’ SAS said in a statement.”
15 Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

16 305. On May 17, 2004, an article was published in *IAC (SM) Newsletter Database*,
17 *Kyodo News International, Inc.*, and *Japan Transportation Scan* entitled “Air New Zealand
18 follows other airlines with fuel surcharge.” The article stated “Air New Zealand announced
19 Wednesday it will introduce a surcharge on tickets, joining airlines around the world that are
20 passing the rising cost of jet fuel on to passengers.” The article went on to state “Air New
21 Zealand could no longer absorb escalating fuel costs combined with a rapidly depreciating New
22 Zealand dollar and was forced to implement the surcharge, [Air New Zealand group general
23 manager of marketing, network and sales Norm Thompson] said in a statement.” Defendant did
24 not disclose that collusion was the true reason for fuel surcharge increases.

25 306. Another article published on May 17, 2004 in *Dow Jones Factiva* and *Reuters*
26 entitled “Air France latest airline to adopt fuel surcharge.” The article said “French carrier Air
27 France (AIRF.PA) will introduce a fuel surcharge of three euros per flight from May 19 due to
28

1 the steep rise in fuel prices, the airline said in a statement on Monday.” Defendant did not
2 disclose that collusion was the true reason for fuel surcharge increases.

3 307. An article published in *Dow Jones Factiva* and *Reuters* on May 18, 2004 entitled
4 “Airline Swiss raises fares citing high fuel costs” stated that Swiss International Air Lines was
5 increasing air fares as a result of higher oil prices. Defendant did not disclose that collusion was
6 the true reason for fuel surcharge increases.

7 308. On May 20, 2004, *Global News Wire*, *Asia Africa Intelligence Wire*, *The Indian*
8 *Express Online Media Ltd.*, and *Financial Express* published an article entitled “Fuel Prices May
9 Mar Tourism Feel-Good.” The article cited a Cathay Pacific official as stating that the reason for
10 fuel surcharges recently imposed by airlines was “the recent exceptionally high level of fuel
11 prices.” Defendant did not disclose that collusion was the true reason for fuel surcharge
12 increases.

13 309. On May 23, 2004, the *Los Angeles Times* published an article entitled “Airfares
14 rise on fuel costs” which said “citing the soaring price of jet fuel, foreign airlines began raising
15 passenger fares or adding fuel surcharges.” The article referenced surcharges imposed by Swiss
16 International Air Lines, Air France, British Airways, Qantas, and Singapore Airlines. The article
17 did not disclose collusion in fixing the prices of air transportation. A similar article was
18 published on May 25, 2004 in *Flight International*. This article referenced surcharges by British
19 Airways, Continental Airlines, KLM, Qantas, and Singapore Airlines. The article stated that
20 “many carriers, including United blame fuel costs for their continuing losses.” Defendants did
21 not disclose that collusion was the true reason for fuel surcharge increases.

22 310. A May 26, 2004 article published in *Associated Press Worldstream* entitled
23 “Malaysia Airlines to impose surcharge to offset rising fuel costs” referred to Malaysian as “the
24 latest airline to slap extra charges on passengers because of rising fuel prices.” A similar article
25 was published that same day in *Dow Jones Factiva* and *Dow Jones Newswires*, and quoted
26 Malaysian Airline Managing Director Ahmad Fuaad Dahlan as saying that the airline was
27 “requesting the surcharge due to high fuel prices.” A similar article was published on May 27,
28

1 2004 in *Airline Industry Information*. Defendant did not disclose that collusion was the true
2 reason for fuel surcharge increases.

3 311. An article published on May 26, 2004 in *Airline Industry Information* stated “Thai
4 Airways International is seeking to impose a fuel surcharge on international flights to offset
5 higher fuel prices.” Defendant did not disclose that collusion was the true reason for fuel
6 surcharge increases.

7 312. On May 27, 2004, *Dow Jones Factiva* and *Reuters* published an article entitled
8 “Thai Hot Stocks – Thai Air at month high.” The article stated that Thai Airways International
9 PCL “would impose a fuel surcharge of up to \$15 on international flights to offset surging oil
10 prices.” Defendant did not disclose that collusion was the true reason for fuel surcharge
11 increases.

12 313. On May 29, 2004, *Dow Jones Factiva* and *Reuters* published an article entitled
13 “Malaysian Airline says to impose fuel surcharge.” The article stated that Malaysian Airline
14 System would “impose a fuel surcharge on all international routes from June 1, due to surging
15 prices of jet fuel, the carrier said on Saturday.” Defendant did not disclose that collusion was the
16 true reason for fuel surcharge increases.

17 314. On June 1, 2004, *Agence France Press* published an article entitled “Singapore
18 Airlines imposes fuel surcharge for all flight legs.” This article stated “Singapore Airlines will
19 next week extend a fuel surcharge of five US dollars for each leg of all its flights in an effort to
20 offset the impact of rising oil prices, the carrier said Tuesday. . . . ‘This move is necessary in
21 light of rising fuel prices and in line with action being taken by other major carriers to help
22 defray part of the higher fuel cost,’ it said in a statement.” The article went on to say “[a]irlines
23 say they are unable to absorb the impact of rising oil prices, which have this year soared more
24 than 30 percent higher than last year’s average.” Similar articles were published that same day
25 in *Airline Industry Information*, *Dow Jones Factiva*, and *Reuters*. Defendant did not disclose
26 that collusion was the true reason for fuel surcharge increases.

1 315. An article published in *Financial Times Information*, *Global News Wire – Asia*
2 *Africa Intelligence Wire*, and *Thai Press Reports* on June 2, 2004 entitled “Thai Gets
3 Government Approval for Surcharge” stated that Thai Airways would be levying a fuel
4 surcharge “to cover rising fuel costs.” Defendant did not disclose that collusion was the true
5 reason for fuel surcharge increases.

6 316. On June 4, 2004, an article was published in *Dow Jones Factiva* and *Reuters*
7 entitled “ANA to raise int’l fares by 5 pct.” The article stated that All Nippon Airways Co.
8 “plans to raise international passenger fares by five percent to counter a spike in oil prices, its
9 chief executive said on Friday.” Defendant did not disclose that collusion was the true reason
10 for fuel surcharge increases.

11 317. On June 9, 2004, *Financial Times Information*, *Global News Wire – Asia Africa*
12 *Intelligence Wire*, and *The Saigon Times Daily* published an article entitled “More Airlines
13 Impose Fuel Surcharge.” The article described fuel surcharges supposedly imposed “to cope
14 with rising oil prices on the world market.” Among the airlines imposing surcharges mentioned
15 in the article were Vietnam Airlines, Singapore Airlines, Qantas Airways, and Cathay Pacific.
16 The article did not say anything about collusion in setting prices for air transportation.

17 318. On June 16, 2004, an article was published in *Asia Pulse* entitled “Briefing – Asia
18 Aviation – June 16, 2004,” which stated that “Vietnam Airlines has announced that starting June
19 21 it will apply a US\$5 surcharge to the price of international tickets to compensate for the rising
20 cost of fuel.” Defendant did not disclose that collusion was the true reason for fuel surcharge
21 increases.

22 319. On August 18, 2004 *Air Transport Intelligence* published an article entitled “Air
23 France, KLM latest to add fuel surcharge.” The article stated “[n]ewly-merged carriers Air
24 France and KLM have today outlined plans to implement a further fuel surcharge in response to
25 spiraling fuel prices.” Similar articles about Air France’s and KLM’s fuel surcharge were
26 published on the same date by *Dow Jones Factiva*, *Dow Jones Newswires*, *Financial Times*, and
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1 *Global News Wire – Europe Intelligence Wire*. Defendants did not disclose that collusion was
2 the true reason for fuel surcharge increases.

3 320. An article published in *The Business Times Singapore* on August 21, 2004 stated
4 “Singapore Airlines has said it will raise its fuel surcharge from Sept 1 to offset continuing high
5 fuel prices.” Defendant did not disclose that collusion was the true reason for fuel surcharge
6 increases.

7 321. On August 21, 2004, *The Cairns Post* reported that “Qantas [] will increase fuel
8 surcharges on its ticket prices by up to 50 per cent after oil prices surged to all-time highs,
9 threatening the sectors profitability. . . . Chief executive Geoff Dixon flagged a likely increase
10 when Qantas announced a record annual profit on Thursday.” These articles were republished
11 on August 24, 2004, in *Dow Jones Factiva* and *The Wall Street Journal*. Defendant did not
12 disclose that collusion was the true reason for fuel surcharge increases.

13 322. On August 26, 2004, it was reported that Air New Zealand would “increase its
14 passenger fuel surcharge as a result of continuing high oil prices.” This article was published in
15 *Dow Jones Factiva* and *Dow Jones Newswire*. Defendant did not disclose that collusion was the
16 true reason for fuel surcharge increases.

17 323. In an article published on August 28, 2004 in *Financial Times Global News Wire*
18 and *The Christchurch Press*, the following was stated in reference to Qantas: “The airline
19 justifies the surcharge by pointing to a 77 per cent increase in the price of Singapore jet fuel
20 since July last year.” The same article was republished on September 1, 2004, in *The*
21 *Independent*. Defendant did not disclose that collusion was the true reason for fuel surcharge
22 increases.

23 324. On September 9, 2004, an article entitled “SAS ups fuel price surcharge by 2
24 euros per ticket” was published in *Dow Jones Factiva* and *Reuters*. The article said
25 “Scandinavian airline SAS announced it was raising its fuel surcharge on ticket prices by 2 euros
26 on Thursday, citing increasing costs of jet fuel, sending its shares lower. . . . There have
27 subsequently been further increases in the cost of aviation fuel and these are now approximately
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1 15 to 20 percent higher than at the end of May,” SAS said in a statement. Defendant did not
2 disclose that collusion was the true reason for fuel surcharge increases.

3 325. On October 9, 2004, an article appeared in *Financial Times Information – Global*
4 *News Wire – Asia Africa Intelligence Wire* entitled “Air France, Lufthansa Impose Fuel
5 Surcharge.” The article stated that “The soaring price of fuel has compelled Air France to
6 increase its fuel surcharge by 11 euros . . .” Defendant did not disclose that collusion was the
7 true reason for fuel surcharge increases.

8 326. On October 11, 2004, an article was published in *Dow Jones Factiva, Dow Jones*
9 *Newswires* entitled “BA Exec Says High Oil Prices Cost Co GBP 225M-Handelsblatt.” The
10 article stated “last Friday, BA followed the lead of other European airlines like Air France and
11 Lufthansa and increased its fuel surcharge on short-haul and long-haul flights due to rising oil
12 prices.” Defendant did not disclose that collusion was the true reason for fuel surcharge
13 increases.

14 327. On October 12, 2004, article was published in *AFX New Limited, AFX European*
15 *Focus, Dow Jones Factiva, Dow Jones Newswires, and Reuters* entitled “Swiss’ hike fuel
16 surcharge.” The article stated “Swiss International Air Lines AG said it is raising its fuel
17 surcharge due to record high prices of crude oil and kerosene. Defendant did not disclose that
18 collusion was the true reason for fuel surcharge increases.

19 328. The same day, an article entitled “Qantas to raise fuel surcharges” was published
20 in *M2 Communications LTD, M2 Airline Industry Information, Australian Broadcasting*
21 *Corporation, and Agence France Presse*. Defendant did not disclose that collusion was the true
22 reason for fuel surcharge increases.

23 329. Also on October 12, 2004, an article was published in *The Business Times*
24 *Singapore* which stated “Asia Pacific carriers poised to raise fares; Move aimed at preventing
25 profits from being ravaged by rising oil prices” Defendant did not disclose that collusion was the
26 true reason for fuel surcharge increases.

1 330. On October 15, 2004, an article was published in *Business World* entitled
2 “Carriers seek fare hike for international flights.” The article stated “Philippine Airlines
3 President Jaime Bautista earlier said the airline wants to hike the fuel surcharge since \$6 was not
4 enough to offset the cost of fuel.” Defendant did not disclose that collusion was the true reason
5 for fuel surcharge increases.

6 331. On October 16, 2004, the *Sydney Morning Herald* published an article entitled
7 “Qantas Raises Fuel Surcharge.” The article said “Qantas has defended its plans to slug
8 passengers with an additional fuel surcharge from next Wednesday, despite the airline being 100
9 per cent hedged against the surge in oil prices until December 31. . . . ‘With jet fuel now at more
10 than \$US60 a barrel and showing no sign of falling, an increase in the airline’s fuel surcharge
11 was unavoidable,’ Qantas chief financial officer Peter Gregg said in a statement.” Defendant did
12 not disclose that collusion was the true reason for fuel surcharge increases.

13 332. On October 18, 2004, *AFX New Limited*, *AFX European Focus*, and *Agence*
14 *France Presse* published an article entitled “Air NZealand likely to increase fuel surcharges.”
15 The article said “Air New Zealand will likely announce an increase in its jet fuel surcharges
16 within days because of the relentless climb in oil prices, the carrier’s chief executive, Ralph
17 Norris, said here. ‘Where the price of fuel is at the moment, it’s very probable that we will
18 increase our fuel surcharges.’” The same statements were made in an article published on
19 October 21, 2004 in *Dow Jones Factiva*. Defendant did not disclose that collusion was the true
20 reason for fuel surcharge increases.

21 333. On October 26, 2004, *Dow Jones Factiva* and *Reuters* published an article entitled
22 “Thai Airways to raise surcharge on int’l flights.” The article said “Thai Airways International
23 PCL is planning to raise the fuel surcharge on its overseas flights by the end of next month due
24 to soaring fuel prices, an official at the carrier said on Tuesday.” Defendant did not disclose that
25 collusion was the true reason for fuel surcharge increases.

26 334. On November 8, 2004, an article entitled “Singapore Airlines raises fuel
27 surcharge for third time since June to offset rising fuel prices” was published in *Associated Press*
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1 *Worldstream*. The article said “Singapore Airlines and its subsidiary on Monday said they
2 would again increase their fuel surcharges to offset rising jet fuel costs.” Defendant did not
3 disclose that collusion was the true reason for fuel surcharge increases.

4 335. On January 11, 2005 *Aviation Daily* published an article entitled “ANA to add
5 fuel surcharge to international tickets.” The article stated “All Nippon Airways plans to add a
6 surcharge to all international fares starting Feb. 1 to help offset the higher fuel prices, even
7 though crude oil costs have dropped in recent weeks.” Defendant did not disclose that collusion
8 was the true reason for fuel surcharge increases.

9 336. On January 18, 2005, Japan Airlines issued a press release entitled “Introduction
10 of Fuel Surcharge.” The press release stated “[a]s a result of the effects of the unprecedented rise
11 in fuel costs, the JAL Group plans to introduce a fuel surcharge on all international passengers
12 flights, subject to government approval.” The press release did not mention collusion in setting
13 prices of air transportation.

14 337. On March 24, 2005, *Agence France Presse* published an article entitled “Airline
15 Swiss announces major increase in fuel surcharge on fares.” The article stated that “Swiss
16 International Air Lines announced Thursday that it was raising the fuel surcharge on its fares by
17 up to 60 percent because the price of jet fuel had reached ‘record’ levels in recent weeks.” The
18 same announcement by Swiss International was republished in *M2 Airline Industry Information*
19 on March 25, 2005 and in *The Toronto Star* on April 2, 2005. Defendant did not disclose that
20 collusion was the true reason for fuel surcharge increases.

21 338. On April 6, 2005, *Financial Times*, *Global News Wire – Asia Africa Intelligence*
22 *Wire* and *New Zealand Press Association* published an article entitled “Air NZ to Increase Fuel
23 Surcharge.” This article said “Air New Zealand will increase its fuel surcharge from next
24 Tuesday, citing the rising cost of aviation fuel.” The same information was published the same
25 day in *Dow Jones Factiva*, *Dow Jones Newswires*, *AAP Newsfeed*, and *Associated Press*
26 *Worldstream*. The articles did not mention collusion in the pricing of air transportation.
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1 339. On April 7, 2005, *the Sydney Morning Herald* published an article entitled “Flyers
2 may revolt as fuel soars.” In the article, Qantas’ chief financial officer Peter Gregg was quoted
3 saying “It is inevitable that the surcharge will go up. [] Jet fuel prices remain volatile and at
4 record highs.” Neither Mr. Gregg nor the article mentioned collusion in setting the pricing of air
5 transportation. News of the Qantas surcharge was covered in other media including *AAP*
6 *Newsfeed*, *The Daily Telegraph*, *Australian Broadcasting Corporation*, *Dow Jones Factiva*, and
7 *The Age*. The article did not mention collusion in setting the pricing of air transportation.

8 340. On April 12, 2005, *AFX International Focus* published an article entitled “KLM
9 to raise fuel surcharge from Friday.” The article stated “KLM Royal Dutch Airlines said it will
10 increase its jet fuel surcharge in response to ‘soaring’ oil prices.” *Dow Jones Factiva* and
11 *Reuters* both covered the same story on the same day. Defendant did not disclose that collusion
12 was the true reason for fuel surcharge increases.

13 341. On April 14, 2005, *Agence France Presse* published an article entitled “Lufthansa
14 ups fuel surcharge on long-haul flights” which stated “German flag carrier Lufthansa said
15 Thursday it planned to increase its current fuel surcharge on long-haul flights by 10 euros (12.90
16 dollars) to 27 euros with effect from April 25 to take into account the sharp increase in kerosene
17 costs.” Defendant did not disclose that collusion was the true reason for fuel surcharge
18 increases.

19 342. On April 22, 2005, *Associated Press Worldstream* published an article entitled
20 “Singapore Airlines to raise fares again due to fuel price spike.” The article stated that
21 Singapore Airlines would raise fares by as much as US\$8 ([euro]6.10) – its second price hike in
22 six months – but that it still expects to lose money because of a recent surge in jet fuel costs.
23 ‘The revised (fuel) surcharge will still not offset the increase in costs arising from recent record
24 jet fuel prices,’ the airline – the world’s second largest carrier by market capitalization – said in a
25 statement.” Similar articles were published in *Channel NewsAsia*, *M2 Airline Industry*
26 *Information*, *Asia Pulse*, *Dow Jones Factiva*, *The Wall Street Journal Asia*, *Japan Economic*
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1 *Newswire*, and *Global News Wire – Asia Africa Intelligence Wire*. Defendant did not disclose
2 that collusion was the true reason for fuel surcharge increases.

3 343. On June 3, 2005, Japan Airlines issued a press release to the American Region
4 entitled “Japan Airlines Increases International Passenger Fare Fuel Surcharges – effective July
5 1st.” The press release stated that “JAL introduced the fuel surcharge in February this year in
6 response to rises in the cost of fuel. Since then continued fuel cost increases have led JAL to
7 review the amount of fuel surcharge levied.” The press release did not mention anything about
8 collusion in setting the price of air transportation.

9 344. On July 1, 2005, *Associated Press Financial Wire* published an article entitled
10 “Lufthansa to Raise Fuel Surcharge” which stated that “Lufthansa AG said Friday that because
11 of rising fuel costs, it will increase the fuel surcharge on its European and long-haul flights.”
12 Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

13 345. On July 1, 2005, *Business World* published an article entitled “PAL mulls fuel
14 surcharge hike.” The article said “[a]fter oil prices shot up to record-breaking \$61 per barrel
15 early this week, flag carrier Philippine Airlines, Inc. (PAL) said it is mulling on applying for a
16 second round of increase in fuel surcharge this year.” Defendant did not disclose that collusion
17 was the true reason for fuel surcharge increases.

18 346. On July 4, 2005, *Agence France Press* published an article entitled “Air France
19 hikes fuel surcharge on tickets” which stated “Air France, following the lead of other airlines
20 around the world, said Monday it was hiking its fuel surcharge on passenger tickets to offset
21 increased costs due to the high price of oil.” An article published the same day in *Global News*
22 *Wire – Asia Africa Intelligence Wire* entitled “Foreign Airlines Hike Fuel Surcharge” discussed
23 similar surcharges imposed by British Airways and Lufthansa. Defendant did not disclose that
24 collusion was the true reason for fuel surcharge increases.

25 347. On July 8, 2005 *M2 Airline Industry Information* published an article entitled
26 “Singapore Airlines raises fuel surcharge.” The article said that Singapore Airlines would
27 increase its fuel surcharge and that its decision “was motivated by an increase of jet fuel prices.”
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1 Other articles conveying the same information appeared in *Dow Jones Factiva*, *The Wall Street*
 2 *Journal Asia*, *The Business Times Singapore*, *Global News Wire – Asia Africa Intelligence Wire*,
 3 *The Edge Singapore*, and *Aviation Daily*. Defendant did not disclose that collusion was the true
 4 reason for fuel surcharge increases.

5 348. On July 14, 2005, *AFX.Com* published an article entitled “Japan Airlines to hike
 6 international freight fuel surcharge again.” The article stated that Japan Airlines would “raise its
 7 surcharges on international freight for the second time in as many months as fuel costs remain
 8 high.” A similar article covering the same story was published that day in *Agence France*
 9 *Presse*. Defendant did not disclose that collusion was the true reason for fuel surcharge
 10 increases.

11 349. On July 18, 2005, *Dow Jones Factiva* and *Thai News Service* published an article
 12 entitled “Thai Airways to implement additional fuel surcharge.” The article republished a press
 13 release issued by Thai that said “[d]ue to the increase in the cost of fuel, Thai Airways
 14 International Public Company Limited announced that the airline will implement an additional
 15 fuel surcharge on international flights as of 1 August 2005 onwards. Mr. Kanok Abhiradee,
 16 THAI’s President, said the gradual increase in world fuel costs has affected airlines around the
 17 world by incurring increased expense in jet fuel. As the cost of jet fuel has increased and
 18 continues to rise, the company will implement an additional fuel surcharge on international
 19 flights, which is applicable to all passengers traveling on THAI’s international flights with
 20 tickets issued as of 1 August 2005 onwards.” The press release was covered in other media
 21 outlets, including *Financial Times Information*, *Global News Wire – Asia Africa Intelligence*
 22 *Wire*, and *Thai Press Reports*. Defendant did not disclose that collusion was the true reason for
 23 fuel surcharge increases.

24 350. On July 20, 2005, an article entitled “PAL SEEKS ANOTHER FARE HIKE” was
 25 published in multiple outlets including *Financial Times Information*, *Global News Wire – Asia*
 26 *Africa Intelligence Wire*, and *Philippine Daily Inquirer*. In the article, the claim that the fuel
 27 surcharge was a temporary relief for airlines that suffered rising costs due to increases in jet fuel
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1 prices is attributed to Philippine Airlines president Jaime Bautista. Defendant did not disclose
2 that collusion was the true reason for fuel surcharge increases.

3 351. On July 21, 2005, *Business World* published an article entitled “Northwest
4 seeking fuel surcharge hike” which described Northwest Airline’s plans to impose additional fuel
5 surcharges on flights between the United States and the Philippines. The article said that “[t]he
6 airline said the fuel surcharge would cushion the impact of rising world oil prices.” Defendant
7 did not disclose that collusion was the true reason for fuel surcharge increases.

8 352. On August 10, 2005, an article was published in *AFX International Focus*
9 entitled “Japan Airlines extends fuel surcharge due to high oil costs.” The article stated that
10 “Japan Airlines (JAL) said it will extend its fuel surcharge on international routes through the
11 end of march because of the high cost of oil.” Defendant did not disclose that collusion was the
12 true reason for fuel surcharge increases.

13 353. On August 23, 2005 *AFX International Focus* published an article entitled “Swiss
14 raises fuel surcharge to 68 sfr per long haul, 24 sfr per European flights.” The article stated
15 “Swiss International Air Lines AG (‘Swiss’) said it is raising fuel surcharges to 68 sfr per leg
16 (from 53 sfr) for long haul flights . . . citing a steep rise in crude oil and jet fuel prices in recent
17 weeks.” Defendant did not disclose that collusion was the true reason for fuel surcharge
18 increases.

19 354. On August 23, 2005, *Northern Territory News* published an article entitled “Air
20 NZ leads way on fuel surcharge rise.” The article said “Air NZ chief financial officer Rob
21 McDonald said jet fuel is now 42 per cent higher than in August last year and about 25 per cent
22 higher than three months ago. ‘Given that jet fuel is currently around 30 per cent of our total
23 operating costs, we can’t absorb these prices and need to reflect such increases in the cost of
24 travel,’ Mr. McDonald said.” Defendant did not disclose that collusion was the true reason for
25 fuel surcharge increases.

26 355. On September 8, 2005 *AFX International Focus* published an article entitled
27 “Singapore Airlines to raise fuel surcharge” which stated “Singapore Airlines (SIA) said it will
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1 raise its fuel surcharge to partially offset higher operating costs arising from higher jet fuel
2 prices.” *Agence France Press* and *Malaysia General News* published articles the same day to the
3 same effect. Defendant did not disclose that collusion was the true reason for fuel surcharge
4 increases.

5 356. On January 16, 2006, Japan Airlines issued a press release entitled “Japan
6 Airlines Extends & Increases International Passenger Fare Fuel Surcharges.” The press release
7 referred to “rises in the cost of fuel” as the reason for fuel surcharges. The press release did not
8 mention collusion in setting the prices for air transportation. On January 17, 2006, *The*
9 *International Herald Tribune* published an article which said “Japan Airlines said Monday that it
10 planned to raise fuel surcharges on international flights to help offset higher jet fuel prices.”
11 Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

12 357. On April 12, 2006, *MarketWatch* published an article entitled “KLM raises fuel
13 surcharge on long-haul flights.” The article said “KLM Royal Dutch Airlines (nl:09645) on
14 Wednesday said that in response to soaring fuel prices it will raise its fuel surcharge on long-haul
15 flights by 5 euros for each leg of the journey.” Defendant did not disclose that collusion was the
16 true reason for fuel surcharge increases.

17 358. On April 20, 2006, *AFX International Focus* published an article entitled
18 “Lufthansa unit ‘Swiss’ raises fuel surcharge after spike in kerosene prices.” The article said
19 “Deutsche Lufthansa unit Swiss International Air Lines AG said it will raise fuel surcharges
20 following a sharp increase in crude oil and aviation kerosene prices over the past few weeks and
21 days.” Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

22 359. On April 26, 2006, an article entitled “Singapore Airlines to raise jet fuel
23 surcharges on or after May 15” was published in *AFX News Limited* and *AFX Asia*. The article
24 stated “Singapore Airlines Ltd said it will increase its fuel surcharge for tickets issued on or after
25 May 15 as a result of the sustained increase in jet fuel prices.” The article did not say anything
26 about collusion in fixing the prices of air transportation.

1 360. On April 26, 2006, *AFX News Limited* and *AFX International Focus* published a
2 story entitled “Australia’s Qantas raises fuel surcharges again.” The story was published again
3 on April 27, 2006 in *Dow Jones Factiva* and on April 28, 2006, in *The USA Today*. The article
4 said “Australia’s national airline Qantas has again increased its domestic and international fuel
5 surcharges because of soaring crude oil and jet fuel prices. . . .Qantas’ executive general manager
6 John Borghetti said the cost of fuel was a critical issue for the airline industry.” Defendant did
7 not disclose that collusion was the true reason for fuel surcharge increases.

8 361. On April 27, 2006, an article was published in *Dow Jones Factiva* and *Shipping*
9 *Times* referring to Singapore Air entitled “SIA, some other airlines hike fuel surcharge again”
10 The article said “the adjustments will offer only partial relief of higher operating costs arising
11 from persistently high price of jet fuel . . .” Defendant did not disclose that collusion was the
12 true reason for fuel surcharge increases.

13 362. On May 8, 2006, an article entitled “Thailand: National Carrier THAI announces
14 new air travel fuel surcharge rates” was published in *Dow Jones Factiva* and *Thai News Service*.
15 The article said “Thai Airways International (THAI), Thailand’s national airline, announced new
16 fuel surcharge rates affecting both domestic and international routes effective from June 1.
17 According to THAI Vice President for Commercial Affairs Vasingh Kittikul the new rates are in
18 response to rising global energy prices. The tariffs reflect the rising cost of aviation fuel, and are
19 in line with airline practice around the world.” Defendant did not disclose that collusion was the
20 true reason for fuel surcharge increases.

21 363. On May 24, 2006, *Asia Pulse* published an article entitled “Hong Kong
22 Newspaper Highlights which said “Cathay Pacific Airways and Singapore Airlines will raise fuel
23 surcharges by more than 20 percent next month to help offset rising costs.” Defendant did not
24 disclose that collusion was the true reason for fuel surcharge increases.

25 364. On June 13, 2006, *Dow Jones Factiva* and *Dow Jones Newswires* published an
26 article entitled “Malaysia Airlines to Raise Fuel Surcharge – Report” which said “Malaysia
27 Airlines will raise fuel surcharge for flights to the Americas, Europe and South Africa by 20%
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1 from Friday, a report said Tuesday. The flag carrier issued an advisory last week informing
2 travel agents of the hike in surcharge by \$10 to \$60 one-way to mitigate rising fuel cost, The Star
3 newspaper said. Defendant did not disclose that collusion was the true reason for fuel surcharge
4 increases.

5 365. On August 3, 2006, an article entitled "SIA to raise fuel surcharge on ultra long
6 routes" was published in *Dow Jones Factiva* and *Dow Jones Newswire*. The article stated "[t]he
7 revised surcharge on these 'ultra long' routes only partially covers the increased cost of jet fuel,
8 the world's second-biggest carrier by market capitalization said in a statement." An article on
9 the same subject published on August 4, 2006 in *Financial Times* stated "the airline attributed
10 the revised fuel surcharge to the persistently high jet fuel prices. 'The adjustments offer only
11 partial relief on higher operating costs arising from the price of jet fuel, which now hovers
12 around \$90 per barrel,' the statement added." Defendant did not disclose that collusion was the
13 true reason for fuel surcharge increases.

14 366. On August 8, 2006, an article entitled "Air France to Raise Fuel Surcharge from
15 Aug 10" was published in *Dow Jones Factiva* and *Dow Jones Newswires*; the same article was
16 published on August 9, 2006 in *The Calgary Herald* and *The Globe and Mail*. The article stated
17 "Air France, part of the Air France-KLM (AKH) group, Tuesday said it will increase its fuel
18 surcharges as of August 10 due to high oil prices." Defendant did not disclose that collusion was
19 the true reason for fuel surcharge increases.

20 367. On August 8, 2006, an article entitled "KLM raises fuel surcharges" was
21 published in *Dow Jones Factiva* and *Reuters*. The article stated "KLM Royal Dutch Airlines, the
22 Dutch arm of Air France KLM, will raise its fuel surcharge by 5 euros (\$6.42) on
23 intercontinental flights and 1 euro on European flights, it said on Tuesday. . . . increase . . will
24 be dropped as soon as the price of oil has fallen below \$70 per barrel for more than 30
25 consecutive days, KLM said in a statement." The article did not say anything about collusion in
26 fixing the prices of air transportation. These articles were reprinted in the August 10, 2006 issue
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1 of *The International Herald Tribune*. Defendant did not disclose that collusion was the true
2 reason for fuel surcharge increases.

3 368. On August 26, 2006, *The Daily Telegraph* published an article entitled “Qantas
4 fares soar as fuel surcharge doubles.” The article stated “The company had warned it would
5 raise surcharges to offset the rise in fuel prices – for the sixth time in just over two years . . .”
6 Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

7 369. On September 1, 2006, an article entitled “All Nippon Airways raises fuel
8 surcharge” was published in *AFX News Limited* and *AFX International Focus*. The article stated
9 “All Nippon Airways Co Ltd (ANA), Japan’s second largest carrier, said it will raise a fuel
10 surcharge on tickets for the second time this year due to high oil costs. . . . ‘ANA regrets that
11 despite constant efforts to reduce costs and secure greater operating efficiencies, long-term rises
12 in the price of crude oil mean that it must ask its valued customers to share the increased cost
13 burden,’ the company said in a statement.” Defendant did not disclose that collusion was the
14 true reason for fuel surcharge increases.

15 370. On September 3, 2006, an article entitled “Malaysian Airline raises fuel
16 surcharges on international routes” was published in *AFX News Limited*, *AFX – Asia*. The article
17 stated “‘Fuel cost continues to remain the single largest expense item for all carriers,’ it said.
18 Malaysia Airlines will continue monitoring and taking measures to mitigate this cost increase by
19 streamlining and matching fuel surcharge rates with other airlines,’ the statement added.”
20 Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

21 371. On October 20, 2006, *Dow Jones Factiva* and *Thai News Service* reported that
22 Japan Airlines and All Nippon Airways were raising their fuel service charges. According to the
23 article, “[r]ising oil prices were cited as the main reason for the increase.” Defendant did not
24 disclose that collusion was the true reason for fuel surcharge increases.

25 372. On January 15, 2007, *Airguide Online* published an article entitled “Airline
26 Finance News – Asia/Pacific.” The article described plans by Japan Airlines and All Nippon
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1 Airways to raise airfares “to cover high fuel costs.” Defendant did not disclose that collusion
2 was the true reason for fuel surcharge increases.

3 373. On March 22, 2007, *Dow Jones Factiva* and *Reuters* published an article entitled
4 “Lufthansa says no plans to change fuel surcharges.” The article states that Lufthansa had said
5 that “it was not planning any changes to the fuel surcharges it imposes on passengers to
6 compensate for the price of fuel,” and that Air France-KLM “said earlier it would raise its fuel
7 surcharge on long-haul flights operated on the Air France network due to rising oil prices.”
8 Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

9 374. On March 25, 2007 *Manila Bulletin* published an article entitled “News In Brief”
10 which said “Singapore Airlines (SIA) said it will raise fuel surcharges from April 1 following a
11 sharp increase in jet fuel prices.” Defendant did not disclose that collusion was the true reason
12 for fuel surcharge increases.

13 375. On April 4, 2007, *Asia Pulse* published an article entitled “Taiwanese Newspaper
14 Highlights” which stated that “China Airlines and EVA Airways Corp., Taiwan’s two largest
15 carriers, will increase fuel surcharges on overseas flights by 20 percent starting on April 16 after
16 jet fuel prices soared, the island’s transport ministry said.” The transport ministry’s source of
17 information was China Airlines and EVA Airways Corp. Defendant did not disclose that
18 collusion was the true reason for fuel surcharge increases.

19 376. On April 30, 2007, *Dow Jones Factiva* and *Reuters News* published an article
20 entitled “Air France raises fuel surcharges” which said “Air France is increasing its fuel
21 surcharge by 5 euros per segment on long haul flights, the airline said on Saturday. The increase
22 is due to higher oil prices.” Defendant did not disclose that collusion was the true reason for fuel
23 surcharge increases.

24 377. On May 4, 2007, *Dow Jones Factiva* and *Reuters News* published an article
25 entitled “Singapore Hot Stocks-SembCorp Industries, Rickmers in focus” which said “Singapore
26 Airlines, the world’s biggest airline by market value, said it will raise the fuel surcharge on most
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1 of its flights by \$4 to \$58 to offset higher jet fuel prices.” Defendant did not disclose that
2 collusion was the true reason for fuel surcharge increases.

3 378. On May 16, 2007, *The Honolulu Advertiser* published an article which stated
4 “Japan Airlines said it will increase its fuel surcharge to \$64 each way on flights between Japan
5 and Hawai’i.” The article cited the price of jet fuel as the reason for the increase. Defendant did
6 not disclose that collusion was the true reason for fuel surcharge increases.

7 379. On June 21, 2007, *Pacific Business News* published an article entitled “JAL, ANA
8 to hike fuel surcharges July 1” which stated “[c]iting increases in the price of jet fuel, Japan
9 Airlines and All Nippon Airways are increasing their fuel surcharges on July 1. . . . Gilbert
10 Kimura, director of public relations for JAL-Hawaii, said the rate hike is attributed to the price of
11 jet fuel, which is close to \$80 per barrel, an all-time high, according to Kimura.” Defendant did
12 not disclose that collusion was the true reason for fuel surcharge increases.

13 380. On July 12, 2007, *Dow Jones Factiva* and *Reuters News* published an article
14 entitled “Air France, KLM raises fuel surcharge” which said “Airline Air France KLM said on
15 Thursday it would increase its fuel surcharges following a rise in the price of oil.” Defendant did
16 not disclose that collusion was the true reason for fuel surcharge increases.

17 381. On July 14, 2007, *Associated Press Worldstream* published an article entitled
18 “Thai Airways set to increase fuel surcharges on some international flights.” The article said
19 “Thai Airways International announced Saturday it will increase its fuel surcharge on some
20 international flights by \$10US (euro7.25), due in part on the rising cost of jet fuel worldwide.”
21 The article did not say anything about collusion in setting the prices of air transportation.
22 Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

23 382. On July 18, 2007, *The USA Today* published an article entitled “Business Travel”
24 which stated “Thai Airways and Air France are the latest airlines to increase fuel surcharges on
25 selected flights, blaming the rising cost of jet fuel.” Defendant did not disclose that collusion
26 was the true reason for fuel surcharge increases.

1 383. On July 26, 2007, *The Manila Bulletin* published an article entitled “Tourism”
2 which stated “Thai Airways International announced it will increase its fuel surcharge on some
3 international flights by \$ 10, due in part to the rising cost of jet fuel worldwide.” Defendant did
4 not disclose that collusion was the true reason for fuel surcharge increases.

5 384. On July 27, 2007, *Associated Press Financial Wire* published an article entitled
6 “Singapore Airlines to further increase fuel surcharge on tickets.” The article stated “Singapore
7 Airlines will increase its fuel surcharge for tickets to alleviate rising jet fuel costs, the carrier
8 said.” Defendant did not disclose that collusion was the true reason for fuel surcharge increases.

9 385. On August 8, 2007, *Financial Times* published an article entitled “Air France
10 Raises Fuel Surcharge” which stated “Air France . . . has increased its fuel surcharge . . . [t]he
11 rise is being attributed to increasing fuel costs.” Defendant did not disclose that collusion was
12 the true reason for fuel surcharge increases.

13 386. The foregoing are specific, illustrative examples of Defendants’ efforts to conceal
14 their price-fixing activities from the public and competition regulators. Plaintiffs believe that
15 additional examples of concealment will be discovered during discovery, which has yet to occur.

16 387. Further, the very existence of fuel surcharges was often difficult to detect by a lay
17 person. Fuel surcharges were often identified on an airline ticket only as the “YQ” portion of an
18 airline fare, a designation that is totally unintelligible to those outside of the airline industry.

19 388. Very shortly after the February 14, 2006, raids by competition regulators, Ms.
20 Hoshiko Nakano, a senior official in JAL’s passenger Tariff Division of the International Sales
21 & Marketing Department, orally instructed subordinates to destroy any documents concerning
22 communications with other airlines about fare and rate-setting activities. JAL employees carried
23 out that instruction by erasing, shredding or otherwise destroying at least some documentary
24 evidence of JAL’s prior communications with competitors, including ANA. JAL employees also
25 contemporaneously informed a senior manager from ANA of their intent to destroy evidence of
26 prior communications between JAL and ANA.

1 389. Accordingly, Defendants engaged in a successful, illegal price-fixing conspiracy
 2 with respect to passenger air transportation, which they affirmatively concealed in at least the
 3 following respects:

- 4 (a) By agreeing among themselves not to discuss publicly, or otherwise
 5 reveal, the nature and substance of the acts and communications in
 6 furtherance of the illegal scheme;
- 7 (b) By engaging in secret meetings, telephone calls, and other
 8 communications in order to further their illicit cartel;
- 9 (c) By staggering the dates on which changes to fares, including surcharges,
 10 became effective and/or were announced to the public;
- 11 (d) By generating e-mails which recipients were told to destroy after reading;
- 12 (e) By destroying documentary evidence of the alleged conspiracy after the
 13 regulatory raids described above; and/or
- 14 (f) By giving false and pretextual reasons for their pricing of passenger fares
 15 and for the increases in those prices during the relevant period, and by
 16 describing such pricing and increases falsely as being a result of external
 17 costs, including the cost of fuel, rather than collusion.

18 390. As a result, Plaintiffs and the members of the Class assert the tolling of any
 19 applicable statute of limitations affecting the rights of action of Plaintiffs and the members of the
 20 Class during the Class Period.

21 **CLASS ACTION ALLEGATIONS**

22 391. The Plaintiffs bring this action on their own behalf and as a class action pursuant
 23 to Rule 23(a) and (b) of the Federal Rules of Civil Procedure on behalf of the following Class:

24 All persons and entities that purchased passenger air transportation
 25 in the United States at rates that were not immunized by the United
 26 States Department of Transportation for single or multi-segment
 27 travel between the United States and Asia or Oceania from
 28 Defendants or their co-conspirators, or any predecessor, subsidiary
 or affiliate thereof, at any time between January 1, 2000 and the
 present. Excluded from the class are purchases of passenger air
 transportation directly between the United States and the Republic

1 of South Korea purchased from Korean Air Lines, Ltd. and/or
2 Asiana Airlines, Inc.. Also excluded from the class are
3 governmental entities, Defendants, any parent, subsidiary or
4 affiliate thereof, and Defendants' officers, directors, employees
5 and immediate families.

6 392. Plaintiffs do not know the exact number of members of the Class because such
7 information is in the exclusive control of Defendants. Due to the nature of the trade and
8 commerce involved, however, Plaintiffs believe that members of the Class number at least in the
9 hundreds of thousands and are sufficiently numerous and geographically dispersed throughout
10 the United States and the world so that joinder of all Class members is impracticable.

11 393. There are questions of law and fact which are common to the claims of Plaintiffs
12 and the Class they seek to represent, including, but are not limited to:

- 13 (a) Whether Defendants engaged in a combination or conspiracy with their
14 co-conspirators to fix, raise, maintain, and/or stabilize the prices for
15 passenger air transportation, including surcharges;
- 16 (b) Whether the purpose and/or effect of the acts and omissions alleged herein
17 was to restrain trade, or to affect, fix, control, and/or maintain the prices
18 for passenger air transportation, including surcharges;
- 19 (c) The existence and duration of the horizontal agreements alleged herein to
20 fix, raise, maintain, and/or stabilize the prices for passenger air
21 transportation, including surcharges;
- 22 (d) Whether Defendants violated Section 1 of the Sherman Act (15 U.S.C. §
23 1);
- 24 (e) Whether Defendants fraudulently concealed the alleged conspiracy so as
25 to equitably toll any applicable statute of limitations;
- 26 (f) Whether Defendants' agents, officers, employees, or representatives
27 participated in correspondence and meetings in furtherance of the illegal
28 conspiracy alleged herein, and, if so, whether such agents, officers,

employees, or representatives were acting within the scope of their authority and in furtherance of Defendants' business interests;

(g) Whether, and to what extent, the conduct of Defendants caused injury to Plaintiffs and members of the Class, and, if so, the appropriate measure of damages; and

(h) Whether Plaintiffs and members of the Class are entitled to injunctive relief to prevent the continuation or furtherance of the violation of Section 1 of the Sherman Act and/or the foreign laws alleged.

394. Plaintiffs' claims are typical of the claims of the members of the Class they seek to represent.

395. Plaintiffs will fairly and adequately assert and protect the interests of the Class members. Plaintiffs' interests are coincident with, and not antagonistic to, those of the other members of Class they seek to represent.

396. Plaintiffs are represented by counsel competent and experienced in the prosecution of antitrust and class action litigation.

397. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members.

398. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

(a) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

(b) The Class is readily definable and one for which records should exist in the files of Defendants.

(c) Prosecution as a class action will eliminate the possibility of repetitious litigation.

(d) Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would require.

(e) Class treatment will permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such as is asserted in this complaint on an individual basis.

399. This class action presents no difficulties of management that would preclude its maintenance as a class action.

COUNT I

VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1

400. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

401. Defendants and their co-conspirators engaged in a continuing contract, combination, and conspiracy to artificially fix, raise, maintain, and/or stabilize the prices of passenger air transportation, including surcharges for flights between the United States and Asia and between the United States and Oceania, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

402. Defendants and their co-conspirators agreed to, and did in fact, restrain trade or commerce by fixing, raising, maintaining, and/or stabilizing at artificial and non-competitive levels, the prices of passenger air transportation, including surcharges. Their illegal activities involved import trade or import commerce with foreign nations.

403. In formulating and effectuating their contract, combination or conspiracy, Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were to artificially fix, raise, maintain and/or stabilize passenger air transportation, including surcharges. These activities included the following:

- 1 (a) Agreeing to charge prices for passenger air transportation, including
2 surcharges, at certain levels and otherwise fix, raise, maintain and/or
3 stabilize prices for passenger air transportation, including surcharges; and
4 (b) Charging for passenger air transportation, including surcharges at agreed
5 upon levels.

6 404. The illegal combination and conspiracy alleged herein had the following effects,
7 among others:

- 8 (a) The prices charged by Defendants to, and paid by Plaintiffs and members
9 of the Class for passenger air transportation, including surcharges were
10 fixed, raised, maintained and/or stabilized at artificially high and non-
11 competitive levels;
12 (b) Plaintiffs and members of the Class have been deprived of free and open
13 competition in the purchase of passenger air transportation;
14 (c) Plaintiffs and members of the Class have been required to pay more for
15 passenger air transportation, including surcharges, than they would have
16 paid in a competitive marketplace absent Defendants' price-fixing
17 conspiracy;
18 (d) Competition in the sale of passenger air transportation has been restrained,
19 suppressed or eliminated.

20 405. As noted above, Defendants' conduct as alleged herein constitutes or involves
21 import trade or import commerce. Additionally, this conduct both had a direct, substantial, and
22 reasonably foreseeable effect on American domestic, import and export commerce, and had an
23 effect of a kind that antitrust law considers harmful. Higher U.S. prices brought about by
24 Defendants' conspiracy proximately caused injury to those who purchased tickets for air
25 passenger travel in the United States.

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of the Sherman Act claims and any other claims so triable asserted in this Complaint.

Dated: July 14, 2011

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Appendix A

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Air Canada
Air France
Air Hong Kong
Air India
Air Mauritius
Air New Zealand
Air Niugini
Alitalia
All Nippon Airways
Aloha Airlines
American Airlines
Asiana Airlines
Austrian Airlines
Bangkok Airways
Biman Bangladesh Airlines
BMI British Midland
British Airways
Cargolux Airlines
Cathay Pacific Airways
Cebu Pacific
China Airlines
China National Aviation Corporation
Continental Airlines
CSA Czech Airlines
Delta Airlines
Egypt Air
Emirates
El Al Israel Airlines
Ethiopian Airlines
Etihad Airways
Eva Airways
Evergreen Int'l Airlines
Federal Express Corporation
Finnair
Garuda Indonesia
Gulf Air

1 Hahn Air
2 Hong Kong Airlines Limited
Hong Kong Dragon Airlines
3 Hong Kong Express Airways Ltd
Japan Airlines
4 Japan Asia Airways
Jet Airways (India) Ltd
5 Kalitta Air
Kenya Airways
6 KLM Royal Dutch Airlines
Korean Air
7 Lanchile Airlines
8 Lufthansa Cargo AG
Lufthansa German Airlines
9 Malaysian Airlines
10 Martinair Cargo
Myanmar Airways
11 Nippon Cargo Airlines
Northwest Airlines
12 Oasis Hong Kong Airlines Ltd
Ocean Airlines Hong Kong Limited
13 Orient Thai Airlines
14 Pakistan Int'l Airlines
Philippine Airlines
15 Polar Air Cargo
Qantas Airways
16 Qatar Airways
17 Royal Brunei Airlines
Royal Jordanian
18 Royal Nepal Airlines
Saudi Arabian Airlines
19 Scandinavian Airlines System
Singapore Airlines
20 Sky Express S.A.
21 South African Airways
SriLankan Airlines
22 Swiss International
Thai Airways
23 Transmile Air Services Sdn. Bhd.
Turkish Airlines Inc.
24 United Airlines
25 United Parcel Service
US Airways
26 Varig Brazilian Airlines
Vietnam Airlines
27 Virgin Atlantic
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Appendix B

List of Attendees at May 18, 2004 Meeting of the Thailand

Board of Airline Representatives

Mr. Suthep Suebsantiwongse (TG-Chairman)
 Mr. Axel Blom (SK-Chairman EXCOM)
 Ms. J. Rogers (QF/BA(EXCOM Australia))
 Mr. Pandit Chanapai (TG(EXCOM/Thailand))
 Mr. Warren Gerig (UA(EXCOM/N.America))
 Mr. Kachornsak V. (JL-Chairman AC BA)
 Mr. Louis Moser (QF/BA-Chairman AOC)
 Mr. Smartchai Tuchinda (AF)
 Ms. Ujala tham (AI)
 Mr. Shafiwar Rahman (BG)
 Mr. Thira K. (BR)
 Mr. Nelson Fang (CI)
 Mr. Yongyut Lujintanon (CX)
 Mr. Soonthorn Suree (EK)
 Ms. Aree H. (GA)
 Mr. Rakesh Bhatia (IC)
 Mr. Kamol V. (JL)
 Mr. James K. C. Yeung (KA)
 Mr. Suchon Paleewong (KE)
 Ms. Merita Ombuor (KQ)
 Mr. Ihab Sourial (KL)
 Mr. Hamed Almatoq (KU)
 Mr. Wolfgang Schmidt (LH)
 Mr. Ashrat Osmen (MS)
 Mr. Somnuek Asavaveeradej (NH)
 Mr. Sarathool M. (NW)
 Mr. Buranut Limjitti (OS)
 Mr. Vorakit Nivatwong (OZ)
 Mr. Suchard Buranakarn (PG)
 Ms. Dell Merano (PR)
 Ms. Vatchara Silpohevagitja (PR)
 Mr. Taleb Hadidi (RJ)
 Ms. Wantip Piyamalmas (RJ)
 Mr. Chokchai Ittipanuvat (TK)
 Mr. Esra Pehlivangogli (TK)
 Mr. Rohan Seneviratne (UL)
 Ms. Vannasiri (8M)
 Guest Mr. Prakobkiat Ninnad (TG (VP, Petroleum Management))

Appendix C

List of Recipients of Carol Phatoomros May 24, 2004 E-mail

Re: Fuel Surcharges

Singapore Air (Tuckwah Tang)
 Thai (BAR Chairman Suthep Suebsantiwongse, pandit.c@thaiairways.com)
 US (Warren Gerig)
 SAS (Alex Blom)
 CX (Ivan Chu)
 BA (Julianne M. Rogers)
 LH (Wolfgang Schmidt)
 Emirates (Soonthorn Suree)
 Dragon Air (Sutthisak Pungtamawatthanakun, James Yeung)
 KLM (Ihab Sorial)
 Air New Zealand (Panya Silparjarn)
 South Aftican Airways (Annie Tsimas)
 American Airlines (Prajak Burarak, Chaichan Khongsrithong)
 Airline Cargo Busines Association (kachornsak@jalcargobkk.com)
 Druk Air (drukair@loxinfo.co.th)
 Aloha Airlines (malai@plt.co.th)
 Air India (airindia@loxinfo.co.th)
 Angel Airlines (info@angelairlines.com)
 Air Canada (airagcy@asiaaccess.net.th)
 Air France (joroutier@airfrance.fr, potulyaanukij@airfrance.fr)
 Finnair (Finnair.Thailand@finnair.com)
 Eva Airways (gsiamair@loxinfo.co.th)
 Air China (cabkk@asianet.co.th)
 China Southern Airlines (bkkcsn@ksc.th.com)
 Ethiopian Airlines (bkkam@ethiopianairlines.com)
 Indian Airlines (smicbkk@ksc.th.com)
 ANA (bkksg@ana.co.th, asava@ana.co.jp)
 NWA (sarathool@nwa.com)
 Air Macau (deksth@asiaaccess.net.th)
 Czech Airlines (prae@guetravel.com)
 Asiana (aabkksmz@flyasiana.com)
 Bangkok Air (pwiesner@bangkokair.co.th)
 Qatar Air (qatarair@loxinfo.co.th)
 Varig (varigbkk@federal.co.th)
 China Southwest Airlines (szbkk@bkk3.loxinfo.co.th)
 Turkish Airlines (tkacct@thy.co.th)
 Myanmar Airways (maibkk@asiaaccess.net.th)
 Sri Lankan (bkkadmin@srilankan.lk, bkksales@srilankan.lk)
 Egypt Air (bkkdm@egyptair-bangkok.th.com)
 Korean Air (bkksm@koreanair.co.kr)
 Air-MPA (hhansen@mpa-security.com)

1 Royal Brunei Airlines (bkkprapat@rba.com.bn, bkkwatans@rba.com.bn)
 JAL (bkkssm.jal@jal.com)
 2 Gulf Air (bkkszg@gulfair.co.th)
 China Airlines (lin-sen_fang@e-mail.china-airlines.com)
 3 Bangladesh Biman (bimanbkk@loxinfo.co.th)
 El Al (elalbkk@hotmail.com)
 4 Qantas (Lmoser@qantas.com.au)
 Federal Express (cliftonchua@fedex.com, phaswan@fedex.com)
 5 Lauda Air (sirichanyaW@laudaair.com)
 Kuwait Airways (bkk@kuwait-airways.net, airkuwait@yahoo.com)
 6 British Midland (dtwm@loxinfo.co.th)
 Vietnam Air (admin.bkk@vietnam-air.com, Sale.bkk@vietnam-air.com)
 7 Lao Aviation (bkkrrqv@ksc.th.com)
 8 Swiss International Airlien (bsinclai@mail.swiss.com)
 Bangkok Airways (suchard@bangkokair.co.th)
 9 Alitalia (korn@bravox.net)
 10 Phillipine Airliens (palphstar@hotmail.com)
 Austrian Airlines (Buranut.Limjitti@aua.com)
 11 Kenya Air (kenyaair@loxinfo.co.th)
 Air Berlin (Raymond Honings, Markus Moschner)
 12 Silkair (silkair@upcl.loxinfo.co.th)
 China Eastern Airlines (musales@ksc.th.com)
 13 Pakistan International Airlines (piabkk@ji-net.com)
 14 Royal Jordanian (bkktbrj@rja.com.jo)
 Malaysia Airlines (bkkzqmh@samart.co.th)
 15 LOT (preecha@wondervacation.com)
 Garuda Indonesia (secrdmga@box1.a-net.net.th)
 16 Tarom (tarombkk@yahoo.com)
 17 Royal Nepal Airlines (rabkk@cscoms.com)

Appendix D

List of Attendees at September 1, 2005 Meeting of the Thailand

Board of Airline Representatives

Mr. Brian Sinclair-Thompson (LX – President)
 Ms. Julianne Rogers (BA/QF – Board)
 Mr. Patrick Yeung (CX – Board)
 Mr. Soonthorn Suree (EK – Board)
 Mr. Sarathool M. (NW – Board)
 Mr. Rangsiman Mekkhanasamit (TG – Board)
 Ms. Christine Seuge (AF)
 Mrs. Ujala Tham (AI)
 Mr. A. V. Trindade (AI)
 Ms. Neeramun Namalee (AI)
 Mr. Malai Sakolviphak (AQ)
 Mr. Markku Dravainen (AY)
 Mr. Vorakit Nivatvongs (BI)
 Mr. Charlie Fu (CI)
 Mr. Andy Yao (CI)
 Mr. Billy Chomsakorn (EY)
 Mr. Teguh Subandrio (GA)
 Mr. Comson Leelalumt (GA)
 Mr. John Evans (GF)
 Mr. Somporn K. Utasiri (GF)
 Mr. S. Iwasaki (JL)
 Mr. Chanchai Wangyuenyong (JL)
 Mr. Sutthisak P. (KA)
 Mr. Suchon Paleewong (KE)
 Mr. Nieon Suddhidhanaroq (KQ)
 Mr. Wolfgang Schmidt (LH)
 Mr. Raymond Honings (LT)
 Mr. Howard Noble (MD)
 Mr. Kimiya Artma (NH)
 Mr. Somnuck Asava (NH)
 Mr. Suchard Buranakorn (PG)
 Ms. Monet Trespeses (PR)
 Mr. Taleb Hadidi (RJ)
 Ms. Wantip Piyamalamas (RJ)
 Mr. Chokchai Ittipanuvat (SA)
 Ms. Punthip Issarungura (SK)
 Mr. Eric Wilson (VA)
 Mr. Nguyen Nhu Than (VN)
 Mr. Gilmore Soe Min (8M)

1 Mr. Prakit Trongkarmonmas (EY/ACBA Chairman)
2 Ms. Sopin Daengteth (LX/AOC Chairperson)
3 Mr. Chitvee Leelasiri (IATA)
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Appendix E

List of Recipients of Carol Phatoomros August 18, 2005

E-mail Re: Fuel Surcharges

Singapore Air (David Lau)
 Thai Airways (vasing.k@thaiairways.com, nn.office@thaiairways.com,
 wallop.b@thaiairways.com)
 United Airlines (Eric Wilson)
 SAS (Axel Blom)
 CX (Patrick Yeung,
 BA (Julianne M. Rogers)
 LH (Wolfgang Schmidt)
 Tarom (tarombkk@yahoo.com)
 JAL (kachornsak@jalcargobkk.com)
 Druk Air (drukair@loxinfo.co.th)
 Aloha Airlines (malai@plt.co.th)
 Air India (airindia@loxinfo.co.th)
 Angel Airlines (info@angelairlines.com)
 Air Canada (airagcy@asiaaccess.net.th)
 Air France (joroutier@airfrance.fr)
 Finnair (Finnair.Thailand@finnair.com)
 Eva Airways (gsiamair@loxinfo.co.th)
 Air China (cabkk@asianet.co.th)
 China Southern Airlines (bkkcsn@ksc.th.com)
 Emirates (Soonthorn Suree)
 Ethiopian Airlines (bkkam@ethiopianairlines.com)
 Garuda (secrdmga@box1.a-net.net.th)
 Indian Airlines (smicbkk@ksc.th.com)
 Dragon Air (Sutthisak Pungtamawatthanakun)
 KLM (Ihab Sorial)
 LOT (preecha@wondervacation.com)
 Malaysia Airlines (bkkzqmh@samart.co.th, mohdali@samart.co.th)
 Silkair (silkair@upc1.loxinfo.co.th)
 China Eastern Airlines (musales@ksc.th.com)
 NW (sarathool@nwa.com)
 Air Macau (deksth@asiaaccess.net.th)
 Air New Zealand (Panya Silparjarn)
 Asiana (aabkksmz@flyasiana.com)
 Bangkok Airways (pwiesner@bangkokair.co.th)
 Pia (piabkk@ji-net.com)
 Qatar Airways (jer@th.qatarairways.com)
 China Southwest Airlines (szbkk@bkk3.loxinfo.co.th)
 SAA (Nely Kusmin)
 Royal Jordanian (thadidi@rja.com.jo)
 Cathay Pacific (Alan Tang)
 LH (Vanida Charoensombud, lhbkk@samart.co.th)

1 Dragon Air (Stephen TK Chang)
 2 Turkish Airlines (tkacct@thy.co.th)
 Myanmar Airways (bkk.cm@maiair.com)
 3 Sri Lankan Airlines (bkkadmin@srilankan.lk, hussainj@srilankan.aero)
 KAL (bkksm@koreanair.co.kr)
 4 Royal Nepal Airlines (rabkk@cscoms.com)
 Air- MPA (hhansen@mpa-security.com)
 5 American Airlines (Prajak Burarak, Chaichan Khongsrithong)
 Japan Airlines (chanchai.wangyuenyong@jal.com)
 6 Gulf Air (bkkszgf@gulfair.co.th)
 China Airlines (Charlie Fu)
 Bangladesh Biman (bimanbkk@loxinfo.co.th)
 8 El Al (elalbkk@hotmail.com)
 Qantas (Lmoser@qantas.com.au)
 9 Fedex (cliftonchua@fedex.com)
 10 Kuwait Airways (bkk@kuwait-airways.net, airkuwait@yahoo.com)
 Srilankan (bkksales@srilankan.aero)
 11 British Midland (dtwm@loxinfo.co.th)
 Vietnam Airlines (admin.bkk@vietnam-air.com)
 12 Lao Aviation (bkkrrqv@ksc.th.com)
 Lauda Air (TantiprasutP@laudaair.com)
 13 Swiss International (Brian Sinclair-Thompson)
 Air France (potulyaanukij@airfrance.fr)
 14 Bangkok Airways (suchard@bangkokair.co.th)
 Federal Express (phaswan@fedex.com, ichand@fedex.com)
 15 Alitalia (korn@bravox.net)
 Vietnam Airlines (Sale.bkk@vietnam-air.com)
 16 Philippine Airlines (palphstar@hotmail.com)
 Austrian Airlines (Buranut Limjitti)
 17 Royal Brunei (vorakitn@rba.com.bn)
 ANA (asava@ana.co.jp, k.arima@ana.co.jp, Kuniko Ito)
 19 Air Berlin (Raymond Honings, Markus Moschner)
 Myanmar Airways (bkk.cm@maiair.com)
 20 Malaysia Airlines (mohdali@samart.co.th)
 Etihad Airways (kalbrow@etihadairways.co.th, asomjaiwongse@etihadairways.co.th)
 21 Kenya Air (Merita Ombour, kenyaair@loxinfo.co.th)
 Qatar Airways (mkoleilat@qatarairways.com.qa)
 22 Phuket Airlines (kavida@phuketairlines.com)
 Kuwait Airways (bkk@kuwaitairways.com, airkuwait@yahoo.com)
 23 Phuket Airlines (dwpatana@phuketairlines.com)
 AOC (sborisut@mail.swiss.com)
 24 JAL (bkkss.jal@jal.com)
 Air Madagascar (Howard Noble)
 25 IATA (LEELASIRIC@iata.org)
 26
 27
 28

Appendix F

Recipients of Joanne Sotocinal E-mail of May 25, 2004

Re The Philippines BAR Fuel Surcharge Proposal

China airlines (Yuchih@china-airlines.com)
 Royal Brunei Airlines (Mnlagnes@rba.com.bn)
 Federal Express (Alex Brandes, Ssdavid@fedex.com)
 Korean (koreanmnl@hotmail.com)
 Asiana (Hyunil Kim, aamnlsmz@flyasiana.com, Rene01@flyasiana.com)
 Air France (mlreyes@airfrance.fr, Lovergeon@airfrance.fr)
 Gulf Airways (Bobby Hukom)
 DLH (Darryl Modelo, Dietmar Kramer, Jo Portugal)
 Singapore Air (David Lau, Nenita Dy, Eugene Chew)
 Felix Cruz (PAL)
 Kuwait Airways (Manager@kuwaitairways.com.ph, Sales@kuwaitairways.com.ph)
 Emirates (Gigie Baroa)
 Malaysia Airlines (Malaysia@skyinet.net)
 Pakistan International Airlines (Mnlupk@piac.com.pk)
 EVA (Jackyu@asia-pacific.evaair.com, Nenitachan@asia-pacific.evaair.com)
 PAL (Jing Javier, Tillit Inoturan, Rol_legal)
 KLM (Jose Laurente)
 Cebu Pacific Air (Jose Inez, Roland Nunez)
 Qatar Airways (manolo@qatarairways.com.ph)
 Cathay Pacific (Mark Sutch, Vickie Yue)
 American Airways (Mary Ann Marcias)
 JAL (Kubo Masanobu)
 Alitalia (Benini Mauro)
 SAS (Nila Layug)
 Swiss (Paul Schenk)
 NCA (Tetsuo Sugiyama)
 mnlaa@thaimnl.com.ph
 Sales@thaimnl.com.ph
 czenarosa@globenet.com.ph
 svcn@twasp.com
 kalkts@hanmail.net
 HKVNPH@qinet.net
 msadmin@info.com.ph
 Mcabanto@mozcom.com
 Jcting@info.com.ph
 Safaisal@skyinet.net

Appendix G

Summary of Investigations With Respect to Defendants Named in the Transpacific Litigation

DEFENDANT	AIR CARGO ¹ DEFENDANT	PLED GUILTY TO US DOJ CRIMINAL CHARGES	US DOJ FINE	EC ²	NZCC ³	ACCC ⁴	CCB ⁵	KFTC ⁶
AIR NEW ZEALAND	X			X	X	X		
AIR FRANCE/KLM	X	X	\$350 million	X	X	X	X	X
ALL NIPPON AIRWAYS CO. LTD	X	X	\$73 million	X				X
BRITISH AIRWAYS	X	X	\$300 million	X	X	X	X	X
CATHAY PACIFIC AIRWAYS LTD	X	X	\$60 million	X	X	X		X
CHINA AIRLINES		X	\$40 million	X				
CONTINENTAL AIRLINES								
EVA (TAIWAN)		X	\$13.2 million	X				
JAL (JAPAN AIRLINES INT'L)	X	X	\$110 million	X	X	X		X
LUFTHANSA/ SWISS INTERNATIONAL	X	Amnesty Applicant ⁷		X		X		X
MALAYSIAN AIRLINES				X	X	X		X
PHILIPPINE AIRLINES								
QANTAS (AUSTRALIA)	X	X	\$61 million	X	X	X	X	X
SAS (SCANDINAVIAN)	X	X	\$52 million	X				X
SINGAPORE AIRLINES	X			X	X	X		X
THAI AIRWAYS	X			X	X	X		X
		TOTAL	\$933 million					

¹ Air Cargo -
In re Air Cargo Shipping Services Antitrust Litigation;
US District Court, ED New York, Case no. 06-MD-1775

² EC - European Commission

³ NZCC - New Zealand Commerce Commission

⁴ ACCC - Australian Competition and Consumer commission

⁵ CCB - Canadian Competition Bureau

⁶ KFTC - Korea Fair Trade Commission